

SUPPLEMENT TO THE SWAZILAND GOVERNMENT GAZETTE

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PART B

SI

THE SECURITIES ACT, 2010

(Act No. 9 of 2010)



I ASSENT

MSWATI III
King of Swaziland

02nd November, 2010

AN ACT ENTITLED

AN ACT to promote and facilitate the development of an orderly, fair and efficient capital market in Swaziland and for matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland.

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PART I PRELIMINARY

Short title and commencement

1. This Act may be cited as the Securities Act, 2010, and shall come into force on the date of publication in the Gazette.

Interpretation

2. (1) In this Act, unless the context otherwise requires:

"advertisement" includes every form of advertising, whether:

- (a) in a publication, by the display of Notices, by means of circulars or other documents;

- (b) by the exhibition of photographs, cinematograph films or videos;
- (c) by way of sound broadcast, television, or by the distribution of recordings; or,
- (d) in any other manner;

"*auditor*" means a practising auditor duly registered by the Swaziland Institute of Accountants in terms of the Accountants Act, 1985;

"*Board*" has the same meaning as in the Financial Services Regulatory Authority Act, 2010;

"*book*" includes any register, document or other record of information and any account or accounting record, however compiled, recorded or stored whether in written or printed form or microfilm by electronic process or otherwise;

"*capital adequacy*" means adequate financial resources to meet business commitments and to withstand risks to which a licensed person may be subjected;

"*Central Bank*" means the Central Bank established under the Central Bank of Swaziland Order, 1974;

"*central securities depository*" means a person licensed as a central depository in terms of section 107 of this Act;

"*collective investment scheme*" means any arrangement in respect of property of any description, including money, the purpose or effect of which is to enable a person taking part in the arrangement, whether by becoming the owner of the property or any part of it or otherwise, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income and where:

- (a) the persons who are to participate in the arrangement do not have day-to-day control over the management of the property in question;
- (b) the contributions of the persons who participate in the arrangement are pooled; and,
- (c) the property in question is managed as a whole by or on behalf of the operator of the scheme;

"*company*" has the same meaning as in the Companies Act, 2009;

"*contract for differences*" means a right under a contract which does not provide for the delivery of securities, but whose purpose or pretended purpose is to secure a profit or avoid a loss by reference to fluctuations in:

- (a) a share index or other similar factor connected with other securities;
- (b) the price of other particular securities;
- (c) the interest rate offered on money placed on deposit; or,
- (d) the exchange rate available between two or more currencies;

"*dealer*" means a person who carries on the business of dealing in securities whether or not that person carries on any other business, but does not include an exempt dealer;

"*dealer's licence*" means a licence under Part V of this Act authorising a company to carry on business as a dealer;

"*dealer's representative*" means a person, by whatever name described, who is in the direct employment of, or acting for, or by arrangement with, a dealer, and who performs for that dealer any of the functions of a dealer, other than work ordinarily performed by accountants, clerks or cashiers, whether or not the remuneration of that person is by way of salary, wages, commission or otherwise, and includes any director or officer of a company who performs for the company any of those functions, whether or not the remuneration of that director or officer is as aforesaid;

"*dealer's representative's licence*" means a licence under Part V of this Act authorising a person to act as a dealer's representative;

"*dealing in securities*" means, whether as principal or agent, making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into:

- (a) any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities; or,
- (b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the price of securities;

"*debt security*" means any instrument creating or acknowledging indebtedness issued or proposed to be issued by a company including a debenture, debenture stock, loan stock, bond or note;

"*depository receipt*" means a certificate or other record which:

- (a) is issued by or on behalf of a person who holds any shares, debt securities or warrants of a particular issue; and,
- (b) acknowledges that another person is entitled to rights in relation to those securities or securities of the same kind;

"*exchange licence*" means a licence to carry on the business of a securities exchange in terms of this Act;

"*exchange Rules*" means, in relation to a securities exchange, the Rules governing the activities and market conduct of a securities exchange or of its members, by whatever name called and wherever contained, and includes Regulations, by-laws; and Rules contained in the articles and memorandum of the securities exchange;

"*exempt dealer*" means:

- (a) a person who carries on a business of dealing in securities only through the holder of a dealer's licence for his or her own account;
- (b) any person acting in the capacity of a manager or trustee or custodian under a collective investment scheme approved under Part VI of this Act;
- (c) any bank licensed under the Financial Institutions Act, 2005, if the dealing is by way of:
 - (i) making or offering to make with any person an agreement for or with a view to the underwriting of securities;

- (ii) making an invitation to persons to subscribe for securities or to purchase securities on the first sale thereof;
 - (iii) issuing any document, which is or is deemed to be a prospectus within the meaning of the Companies Act, 2009;
 - (iv) acquiring or disposing of securities only through the holder of a dealer's licence; or,
 - (v) such other way as the Registrar may from time to time decide;
- (d) any public statutory corporation constituted under any law in Swaziland; or,
- (e) an investment adviser whose dealing in securities is solely incidental to his carrying on the business of managing a portfolio of securities on behalf of a client;

"Financial Services Regulatory Authority" means the Financial Services Regulatory Authority established in terms of the Financial Services Regulatory Authority Act No. 2 of 2010;

"government and public debt security" means any loan stock, bond, note or other instrument creating or acknowledging indebtedness issued by or on behalf of a Government, statutory corporation, parastatal body or local authority;

"holding company" means a company as defined in subsection (5) of this section;

"investments" mean, in relation to an investment adviser:

- (a) securities listed on a licensed securities exchange;
- (b) securities listed on a foreign securities exchange;
- (c) participatory interests in a collective investment scheme approved under this Act;
- (d) participatory interests in a collective investment scheme licensed or registered in a foreign country;
- (e) any other instruments declared to be investments for the purposes of this Act by the Registrar by Notice published in the Gazette; or,
- (f) funds intended for the purchase of such securities, participatory interests or other instruments;

"investment adviser" means a persons who:

- (a) carries on the business of advising others concerning investments;
- (b) as part of a regular business, issues or promulgates analyses or reports concerning investments; or,
- (c) pursuant to a contract or agreement with a client, undertakes on behalf of the client, whether on a discretionary authority granted by the client or otherwise, the management of investments, including the arranging of purchases, sales or exchange of securities through a licensed dealer;

but does not include:

- (d) a financial institution licensed under the Financial Institutions Act, 2005;
- (e) an insurance company licensed under the Insurance Act, 2005;
- (f) a lawyer or accountant in practice whose advice with respect to investments is wholly incidental to the practice of his profession;
- (g) a pension fund licensed under the Retirement Funds Act, 2005;
- (h) a building society registered under the Building Societies Act, 1962;
- (i) a licensed dealer or a licensed dealer's representative whose advice with respect to investments is solely incidental to the conduct of his business of or employment in dealing in securities; or,
- (j) a person who is the proprietor or publisher of a bona fide newspaper, magazine, journal or other periodical publication that is generally available to the public, in relation to any advice with respect to investments given therein, where:
 - (i) the advice is given or the analyses or reports are issued or promulgated only through that publication;
 - (ii) that person receives no commission or other consideration for giving the advice or for issuing or promulgating the analyses or reports; and,
 - (iii) the advice is given and the analyses and reports are issued or promulgated solely as incidental to the conduct of that person's business as a newspaper proprietor or publisher;

"investment adviser's licence" means a licence under Part V of this Act authorising a person to act as an investment adviser;

"investment adviser's representative" means a person, by whatever name described, in the employment of, or acting for or by arrangement with, an investment adviser and who performs for that investment adviser, any of the functions of an investment adviser, other than work ordinarily performed by accountants, clerks or cashiers, whether the remuneration of that person is by way of salary, wages, commission or otherwise, and includes any director or officer of a company who performs any of those functions for the company, whether or not the remuneration of that director or officer is as aforesaid;

"investment adviser's representative's licence" means a licence issued under Part V of this Act authorising a person to act as an investment adviser's representative;

"Investor Protection Fund" means a fund established under section 21 of this Act;

"issuer" means a person who issues or proposes to issue any security;

"licensed person" means a person or company licensed or registered or authorised in terms of this Act;

"licensed securities exchange" means a securities exchange to which an exchange licence has been issued in terms of this Act;

"list" or *"listed securities"* means securities listed or quoted on a licensed securities exchange;

"*listing Rules*" or "listing requirements" mean, in relation to a securities exchange, Rules governing or relating to:

- (a) the grant of a listing or quotation of, and permission to deal in, securities on a securities exchange or the removal from listing and for other purposes; or,
- (b) the activities or conduct of issuers and other persons who are admitted to that list, whether those Rules:
 - (i) are made by the securities exchange or are contained in any of the constituent documents of the securities exchange; or
 - (ii) are made by another person and adopted by the securities exchange;

"*manager*" means, in relation to a collective investment scheme, a person, by whatever name called, who is authorised in terms of Part VI of this Act to manage, operate or control that scheme;

"*market committee*" means, in relation to a securities exchange, the committee of that securities exchange with responsibility for the enforcement of the exchange Rules and listing requirements of that securities exchange;

"*member*" means any person who is qualified in terms of the exchange Rules of a securities exchange to be a member and is admitted as such by that securities exchange;

"*Minister*." means the Minister responsible for Finance;

"*option contract*" means a standardised contract that gives a person the right, but not the obligation, to:

- (a) buy from, or sell to, the writer of the option, on or before a future date, a particular thing at a pre-arranged price; or,
- (b) receive from, or pay to, the writer of the option on or before a future date, an amount of money depending on whether the value of the particular thing is higher or lower on or before that future date than the pre-arranged value or price;

"*prescribed by the Minister*" means prescribed by the Minister by Regulation published in the Gazette;

"*prescribed by the Registrar*" means prescribed by the Registrar by Notice published in the Gazette;

"*public company*" has the same meaning as under the Companies Act, 2009;

"*quotation*" means, in relation to securities and in relation to a securities exchange, includes the displaying or providing, on a securities exchange, of information concerning:

- (a) in a case where offers to sell, purchase or exchange securities at particular prices, or for particular consideration, are made or accepted on that securities exchange, those prices or that consideration,
- (b) in a case where offers or invitations are made on that securities exchange, being offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange the securities at particular prices or for particular consideration, those prices or that consideration, or,

- (c) in any case, the price at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange the securities;

"*Registrar*" means the Registrar of Capital Markets appointed under section 3 of this Act;

"*Regulations*" means Regulations made under this Act;

"*representative's licence*" means a licence to act as a dealer's or investment adviser's representative;

"*securities*" include:

- (a) shares;
- (b) debt securities;
- (c) Government and public debt securities;
- (d) warrants;
- (e) depositary receipts;
- (f) option contracts;
- (g) securities futures;
- (h) contracts for differences;
- (i) participatory interests or units in a collective investment scheme;
- (j) any instruments commonly known as securities; or,
- (k) any other instruments deemed by the Registrar to be securities for the purposes of this Act;

but does not include:

- (m) treasury bills with an original maturity of less than one year;
- (n) promissory notes; or,
- (o) certificates of deposit issued by a bank licensed under the Financial Institutions Act, 2005;

"*securities exchange*" means a public company which constitutes, maintains or provides a market or other place at which, or a facility by means of which:

- (a) offers to sell, purchase or exchange securities are regularly made or accepted;
- (b) offers or invitations are regularly made, being offers or invitations that are intended, or may reasonably be expected to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange securities; or,

- (c) information is regularly provided concerning the prices at which, or the consideration for which, particular persons or particular classes of persons, propose, or may reasonably be expected, to sell, purchase or exchange securities;

"*securities future*" means a right under a contract, which provides for the acquisition or disposal of any other security under which delivery is to be made at a future date and at a price agreed when the contract is made, including a date and a price determined in accordance with the contract;

"*share*" means any share or stock in the share capital of a company;

"*subsidiary company*" or "*subsidiary*" means a company as defined in subsection (2);

"*Technical Committee*" means a committee set up by the Financial Services Regulatory Authority in terms of section 6(1)(c) of the Financial Services Regulatory Authority Act, 2010;

"*this Act*" includes the Regulations and the Rules made and Notices issued hereunder;

"*trust account*" means a trust account established under sections 60, 77 or 81 of this Act;

"*underwriting*" means the purchase of newly issued securities for the purpose of public resale on behalf of the issuer, or the guaranteeing to an issuer that the unsold residue of the issuer's public issue or sale will be taken up;

"*warrant*" means any right, whether conferred by warrant or otherwise, to subscribe for shares or debt securities;

"*wholly owned subsidiary*" means a company as defined in subsection (4).

(2) For the purposes of this Act, a company shall be deemed to be a subsidiary of another company if:

- (a) that other company is a member of it and:
 - (i) holds a majority of the voting rights in it;
 - (ii) has the right to appoint or remove directors holding a majority of the voting rights at meetings of the Board; or,
 - (iii) has the effective control of a majority of the voting rights in it, whether pursuant to agreement with other members or otherwise;
- (b) it is a subsidiary of any company which is a subsidiary of that other company; or,
- (c) subsidiaries of that other company or that other company and its subsidiaries together hold the rights referred to in subparagraph (a) (i), (ii) or (iii).

(3) In determining whether a company holds the majority of the voting rights as contemplated in subsection (2) (a) (i):

- (a) voting rights which are exercisable only in certain circumstances shall be taken into account only:
 - (i) when those circumstances have arisen, and for so long as they continue; or,

- (ii) when those circumstances are under the control of the person holding the voting rights;
- (b) voting rights held by a person in a fiduciary capacity shall be treated as not held by him but by the beneficiary of such voting rights; or
- (c) voting rights held by a person as nominee for another person shall be treated as not held by the nominee but by that other person, and voting rights shall be deemed held by a nominee for another person if they are exercisable only on the instructions or with the consent or concurrence of that other person.

(4) For purposes of this Act, a subsidiary shall be deemed to be a wholly owned subsidiary of another company if it has no member except that other company or a wholly owned subsidiary of that other company and its or their nominees.

(5) For the purposes of this Act, a company shall be deemed to be a holding company of another company if that other company is its subsidiary.

PART II

REGISTRAR OF CAPITAL MARKETS

Registrar

3. There shall be the Registrar of Capital Markets who shall be appointed by the Financial Services Regulatory Authority.

Objectives and functions of the Registrar

4. (1) The principal objectives of the Registrar shall be:
 - (a) the development of all aspects of capital markets in Swaziland with particular emphasis on the removal of impediments to, and the creation of incentives for, longer-term investments in productive enterprises;
 - (b) the creation, maintenance and regulation, through implementation of a system in which the securities exchange participants are self-regulatory, of an exchange in which securities can be issued and traded in an orderly, fair, efficient and transparent manner;
 - (c) the protection of investor interests; and,
 - (d) the reduction of systemic risk.
- (2) For the purpose of carrying out the objectives of the office, the Registrar may:
 - (a) take all available steps to ensure that this Act and any Regulations or Rules made or Notices issued under this Act are complied with;
 - (b) advise the Minister on all aspects of the development and operations of capital markets and, in particular, maintain machinery for the monitoring of market conditions, on a continuing basis, in order to:
 - (i) determine whether any disincentives to capital market development exist and what new incentives should be provided to foster the achievement of the purposes of this Act; and,

- (ii) consider and suggest proposals for the reform of the law relating to capital markets.
- (c) increase the supply of securities by encouraging companies to increase investment in capital assets and raise finance through the public issue of securities; and encourage holders of securities to engage in the secondary market;
- (d) make Rules and issue Notices on all matters within the jurisdiction of the Registrar under this Act and conduct, on a continuing basis, an examination of trading practices in the capital market to determine which practices should be covered by Rules and Regulations in order to provide for fair and orderly exchange conditions and ensure that investors are adequately protected and can develop increased confidence in the capital market;
- (e) establish conditions for, approve, register or grant a licence to a public company or any other person, as the case may be, to operate as a:
 - (i) securities exchange;
 - (ii) dealer, investment adviser or representative of any of the foregoing;
 - (iii) collective investment scheme, manager, trustee or custodian under a collective investment scheme;
 - (iv) central securities depository; or,
 - (v) nominee,
 and ensure the proper conduct of any such business;
- (f) approve standards of competence for dealers, investment advisers, and their respective representatives whether by way of examination or otherwise;
- (g) approve the constitutions, memoranda, articles, by-laws, rules and regulations of securities exchanges and promote and develop self-regulation by such securities exchanges;
- (h) monitor and enforce Regulations for the conduct of licensed persons and for the supervision and investigation of that conduct, including Regulations relating to licensing and the revocation and suspension of licences;
- (i) promote and encourage high standards of investor protection and integrity among licensed persons;
- (j) support the operation of a free, orderly, fair, secure and properly informed capital market;
- (k) regulate the manner of trading and the range of securities traded on a securities exchange, the rules of a securities exchange, listing rules or requirements, margin requirements, capital adequacy requirements, disclosure and periodic reporting requirements, trade settlement and clearing requirements;
- (l) take all reasonable steps to:

- (i) safeguard the interests of persons who invest in securities and to suppress illegal, dishonourable and improper practices in relation to dealings in securities, whether on a securities exchange or otherwise; and,
- (ii) promote and maintain the integrity of investment advisers and their representatives and encourage the promulgation by them of balanced and informed advice to their clients and to the public generally;
- (m) inquire, either of his own motion or at the request of any other person, into the affairs of any person whom the Registrar has approved or to whom he has granted a licence and any public company, the securities of which are traded on a licensed securities exchange; and give directions to such person;
- (n) conduct an inspection of the activities, books and records of any person whom the Registrar has approved and persons to whom the Registrar has granted a licence;
- (o) disseminate to the public information on the capital market and on securities and create facilities from the regular publication of prices, indices, dealings and securities;
- (p) suspend or cancel the listing of any securities or the trading of any securities, for the protection of investors;
- (q) encourage savings and investment of such savings in securities and encourage the development of securities intermediaries and other securities professionals;
- (r) act as an appellate body for appeals from securities exchange actions brought by aggrieved parties;
- (s) require information by licensed and other persons to be provided in the form prescribed by the Registrar;
- (t) regulate and oversee the issue and subsequent trading both in primary and secondary markets of capital market instruments;
- (u) enter into arrangements with regulatory agencies outside Swaziland in order to facilitate the simultaneous listing of securities in Swaziland and elsewhere;
- (v) share both public and non-public information with domestic and foreign counterparts and, in particular:
 - (i) establish information sharing mechanisms, through memoranda of understanding or otherwise, that set out when and how to share both public and non-public information with domestic and foreign counterparts; and,
 - (ii) provide assistance to foreign counterparts who need to make inquiries in the discharge of their functions and exercise of their powers; or,
- (w) exercise and perform such other powers, authorities and duties as may be conferred or imposed upon the Registrar by or under this or any other Act and do all such other acts as may be incidental or conducive to the attainment of the objectives of the objectives of the Registrar or the exercise of the powers of the Registrar under this Act.

(3) In exercising the powers and discharging the functions and duties under this Act, the Registrar shall adopt processes which are:

- (a) consistently applied;
 - (b) comprehensible;
 - (c) transparent to the public; and,
 - (d) fair and equitable.
- (4) In the formulation of policy, the Registrar shall:
- (a) have a process of consultation with the public, including those who may be affected by the policy;
 - (b) publicly disclose, where appropriate, the policies of the Registrar in important operational areas;
 - (c) observe high standards of procedural fairness; and,
 - (d) have regard to the cost of compliance with regulation.

Power of Registrar to make Rules

5. (1) Without prejudice to the generality of the powers conferred by section 4, the Registrar may, by Notice published in the Gazette, make such Rules applying to licensed persons as may be required for the purpose of ensuring the protection of investors including, but not limited to Rules regulating the:

- (a) orderly and fair trading in capital market instruments;
- (b) listing of securities on a securities exchange;
- (c) disclosures about securities transactions by:
 - (i) dealers and their representatives;
 - (ii) persons who acquire or dispose of securities; and,
 - (iii) a securities exchange;
- (d) proper maintenance of books, records, accounts and audits by all licensed persons of their affairs; or,
- (e) the operations of any other bodies corporate or persons dealing with capital market instruments.

(2) All Rules made by the Registrar shall take into account and be consistent with the objective of promoting and maintaining an effective and efficient capital market.

PART III

CAPITAL MARKETS TECHNICAL COMMITTEE

Capital Markets Technical Committee

6. (1) There shall be a Capital Markets Technical Committee to advise:

(a) the Registrar on all matters relating to Capital Market Development in Swaziland; and,

(b) the Registrar on the exercise of the functions of the Registrar under this Act.

(2) The Registrar may request the advice of the Committee on any administrative, technical or policy matter regarding the performance by the Registrar of any of his functions under this Act.

(3) Nothing in sub-section (2) shall prevent the Committee from providing advice to the Minister or the Registrar on its own initiative.

(4) The Committee shall, in the exercise of its functions, have regard to the interests of the public, the protection of investors and the safeguarding of sources of information.

Composition of the Committee

7. (1) The Committee shall consist of:

(a) a Chairperson;

(b) a representative of each licensed securities exchange;

(c) the Principal Secretary of the Ministry responsible for Finance, or a person authorised in writing by the Principal Secretary to act on behalf of the Principal Secretary;

(d) not more than three members appointed by the Registrar; and,

(e) the Registrar or a person authorised in writing by the Registrar to act on Behalf of the Registrar, who shall be secretary to the Committee.

(2) The Chairperson and the members under subsection (1) (d) shall be appointed by the Registrar and shall be persons with experience and expertise in legal, commercial, industrial, capital markets or financial matters.

Meetings of the Committee

8. (1) The Committee shall meet as often as may be necessary but, in any event, at least once every two months.

(2) A meeting of the Committee may be convened at any time:

(a) by the Chairperson;

(b) by the Registrar; or,

(c) at the request of at least one third of the members of the Committee.

(3) At a meeting of the Committee:

(a) the Chairperson shall preside; or,

(b) if the Chairperson is not present, the members present shall elect one of their member to preside.

(4) The quorum for any meeting of the Committee shall be at least half of its members and the Committee may, subject to the requirement for a quorum, regulate the procedure in regard to meetings and transaction of business at such meetings.

(5) All questions for decisions at any meeting of the Committee shall be decided by the vote of the majority of the members present and, in case of an equality of votes, the Chairman shall have a casting vote.

(6) A member of the Committee who has a direct or indirect interest in any decision that is to be taken on any specific matter by the Committee, shall disclose the nature of such interest at the meeting of the Committee where such decision is being taken and the disclosure shall be recorded in the minutes of the meeting.

(7) Where a member or the majority of the members of the Committee believe that that a member's interest in a matter is such as to influence that member's judgement, that member shall not participate in the deliberation or the decision of the Committee on that matter.

(8) Nothing contained in subsection (6) or (7) shall prevent Committee members from voting upon matters which affect them generally.

(9) The Registrar shall be responsible for the administrative work incidental to the functions of the Committee and may submit to the Committee any information that is in the Registrar's possession, or that the Registrar may obtain, and that is relevant to any matter investigated by the Committee.

Term of office of Committee members

9. (1) The members of the Committee shall hold office for a period not exceeding three (3) years and shall be eligible for reappointment.

(2) Any member appointed under section 7 (1) shall cease to hold office as a member of the Committee if:

- (a) that member delivers to the Registrar a written resignation of his appointment;
- (b) on the advice of the Committee, and subject to an independent professional assessment, the Registrar removes that member from office on the grounds that that member is unable or unfit to discharge the functions of a member or is unable to continue as a member;
- (c) that member has been absent for three consecutive meetings of the Committee without leave or good cause;
- (d) that member is insolvent or makes or offers any arrangement with any of that member's creditors;
- (e) that member is sentenced by a court to imprisonment without the option of a fine; or
- (f) that member is convicted of an offence involving dishonesty.

(3) The Registrar shall not take action under subsection (2)(b) unless the Registrar has given that member a hearing.

(4) A member appointed under Section 7 (1) (b) or (c) shall cease to hold office if that member is removed in writing, by Notice to the Registrar, or by the organisation which that member represents.

Allowances

10. A member of the Committee shall be paid such allowances as the Minister may, on the recommendation of the Registrar, approve.

PART IV LICENSING OF SECURITIES EXCHANGES

Restriction on the right to carry on business of a securities exchange

11. (1) Subject to this Act, a person shall not carry on, establish or assist in establishing or maintaining, or hold himself or herself out as carrying on, providing or maintaining the business of a securities exchange except under an exchange licence.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand Emalangeni (E200,000) or to imprisonment for a term not exceeding five (5) years, or to both such fine and imprisonment.

Application for an exchange licence

12. (1) A public company may apply for an exchange licence in respect of one or more types of securities.

(2) An application for an exchange licence shall:

- (a) be made to the Registrar in the manner and form prescribed by the Registrar;
- (b) be accompanied by fees prescribed by the Registrar;
- (c) show that the applicant complies with the requirements referred to in section 13;
- (d) be accompanied by a copy of the proposed exchange rules and the listing requirements;
- (e) be accompanied by the applicant's memorandum and articles of association; and,
- (f) be accompanied by such additional information as the Registrar may require.

(3) The Registrar shall give Notice of an application for an exchange licence in a national newspaper of general circulation in Swaziland at the expense of the applicant, which Notice shall state the:

- (a) name of the applicant;
- (b) place at which the exchange rules may be inspected by members of public; and,
- (c) period within which objections to the licensing may be lodged with the Registrar.

Requirements to be met by applicants for an exchange licence

13. (1) An applicant for an exchange licence shall satisfy the Registrar that the applicant:

- (a) has financial resources sufficient for the proper performance of functions;
- (b) has sufficient arrangements to provide and maintain, to the satisfaction of the Registrar, adequate and properly equipped premises and systems for the conduct of the business of a securities exchange;
- (c) is willing and able to promote and maintain high standards of integrity and fair dealing by its members;
- (d) provides:
 - (i) for a fair representation of persons in the appointment of its market committee members and in the administration of its affairs; and
 - (ii) that one or more market committee members shall represent the public interest and listed companies and not be associated with a member of the securities exchange; and,
- (e) has made such arrangements as the Registrar considers appropriate for:
 - (i) the clearing and settlement of dealings in securities to ensure the performance of transactions effected on the securities exchange, and for the recording and publication of such transactions;
 - (ii) market surveillance;
 - (iii) the effective monitoring and enforcement of compliance with its rules and this Act and any Regulations made or Notices is under this Act; and,
 - (iv) investigating complaints in respect of business transacted by any of its members;

(2) The objects clause of an applicant's memorandum of association shall include the establishment and operation of a securities exchange.

(3) At least two of the applicant's market committee members shall be persons engaged in carrying on the business of dealing in securities independently of and in competition with each other.

Grant of an exchange licence

14. (1) The Registrar in consultation with the Board may, after consideration of an application lodged with the Registrar, grant or renew to a public company a licence to carry on the business of a securities exchange if the Registrar is satisfied that:

- (a) the interests of the public will be served by the issue of the licence;
- (b) such conditions as stipulated by the Registrar have been met; -
- (c) proper arrangements exist to establish a market committee to manage the market and regulatory functions of the securities exchange;
- (d) trading on the securities exchange will not commence before the committee referred to in paragraph (c) is established and the Rules referred to in section 16 comply with the requirements of this Act and are approved by the Registrar; and,

(e) the licence fee prescribed by the Registrar has been paid.

(2) The licence shall specify:

- (a) the place or places at which the business of the securities exchange may be carried on;
- (b) the type of securities to be dealt in;
- (c) that business shall not be carried on in any other manner otherwise than as stipulated in the licence without the written permission of the Registrar; and,
- (d) the period of its validity.

(3) The Registrar shall inform the applicants of the decision of the Registrar on the application not later than 3 months after the date on which the application was received or, if within that period the Registrar has required the applicants to furnish further information in connection with the application, from the date on which that information is furnished.

Circumstances under which an exchange licence may be withdrawn

15. (1) The Registrar may cancel an exchange licence if the Registrar is satisfied that:

- (a) the securities exchange fails to commence operations within a period of one year following the grant of the licence;
- (b) the securities exchange is in continuous breach of any of its obligations under this Act;
- (c) the securities exchange ceases to carry on the business for which it is licensed; or,
- (d) the exchange rules are not properly enforced.

(2) The Registrar shall give thirty (30) days written Notice to a licensed securities exchange of the intention of the Registrar to cancel a licence under this section.

(3) The securities exchange concerned shall make representations to the Registrar within the period prescribed in subsection (2) above giving reasons as to why such a licence should not be cancelled.

(4) If the Registrar has revoked a licence, the Registrar shall, as soon as possible, publish a Notice of such revocation in the Government Gazette and take other means calculated to inform the public of such revocation, including, where possible, publication of the Notice in a newspaper of general circulation in Swaziland.

Contents of exchange rules

16. (1) The exchange rules shall not be inconsistent with this Act.

(2) The exchange rules and practices proposed to be followed shall be such as will ensure that business conducted by means of its facilities will be conducted in an orderly manner so as to afford proper protection to investors and, in particular, the exchange rules shall provide:

- (a) that no natural person is admitted as a member unless that person complies with the prescribed minimum requirements in regard to experience and educational qualifications and is a fit and proper person to be so admitted;

- (b) for the exclusion from its membership of persons who are not of good character and business integrity, and the suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business or for contravention or failure to comply with the exchange rules or the provisions of this Act;
- (c) that a member may not resign where the securities exchange intends to investigate any matter affecting that member or any of the member's representatives for the purpose of deciding whether to expel or take other disciplinary action against that member;
- (d) that the membership of a member who is a dealer is not terminated on any ground, unless the member has had an opportunity of at least thirty (30) days to make representations to the market committee, and that a member who has made such representations to the market committee shall be entitled to be supplied with a copy of a record of the meeting at which his representations were considered;
- (e) that trading in securities shall be efficient, honest, fair, competitive and informed and that the business of the securities exchange is carried on with due regard to the public interest;
- (f) the conditions governing dealings in securities by members of the securities exchange, and the class or classes of securities that may be dealt in by members;
- (g) that there be established requirements and conditions for the listing, suspension and de-listing of securities and that issuers of securities listed on the securities exchange comply with its ongoing disclosure requirements so as to afford to investors proper and timely information for determining their current value;
- (h) that members comply with financial requirements, which are determined from time to time by the market committee or the Registrar, as the case may be;
- (i) that a member who is a dealer and knowingly buys securities from a client of that member's or sells securities to such client on that member's own account and through another dealer, notifies the client concerned in writing that those securities were bought or sold by the member on that member's own account;
- (j) that any qualifying right to be held by any person in order to be admitted as a member, if any, is available for acquisition by any applicant for admission, at not more than the price stated in the exchange rules;
- (k) that every member who is a dealer provides, if required, sureties or security to the satisfaction of the market committee in an amount of not less than an amount as prescribed from time to time in the Gazette by the Minister, for the discharge, during the first three years in which the member is entitled to carry on business as a dealer, after the member has been excused, of the member's liabilities arising out of transactions entered into by the member in respect of securities;
- (l) that members submit to the market committee audited annual financial statements within ninety (90) days after the end of each financial year;
- (m) that a member who is a dealer submits a weekly report in writing to the market committee in which:

- (i) particulars are furnished of securities which the member is required to buy or sell for the account of a person who failed to pay for securities purchased or to deliver securities sold, within the prescribed period, but which the member has not yet purchased or sold; and
 - (ii) reasons are furnished for that member's failure to complete a purchase or sale contemplated in subparagraph (i);
- (n) that the market committee monitors the operations of the securities exchange and submits:
- (i) a yearly report to the Registrar within three (3) months after the end of their year on the activities of the securities exchange during the previous year;
 - (ii) audited financial statements to the Registrar within three (3) months after the end of their financial year; and,
 - (iii) a report to the Registrar on any other matters of importance pertaining to the functioning of the securities exchange; and
- (o) that all requirements pertaining to the prohibition of insider trading, money laundering and other improper conduct are enforced.

(3) The Registrar shall, within thirty (30) days, after the Registrar has granted an exchange licence, cause the exchange rules to be published in the Gazette at the expense of that securities exchange.

(4) No additions to or alterations of the exchange rules shall be valid unless they have, on application by the securities exchange and on payment of the fee prescribed by the Registrar, been approved by the Registrar.

(5) Upon receipt of an application for the approval of the Registrar under subsection (4), the Registrar shall cause to be published, at the expense of the applicant, a Notice in the Gazette setting forth the proposed additions to or alterations of the exchange rules.

(6) The Notice referred to in subsection (5) shall call upon all interested persons, other than members of the securities exchange concerned, who have any objections to the proposed additions or alterations to lodge their objections with the Registrar within a period of thirty (30) days from date of publication in the Government Gazette.

(7) Additions or alterations approved by the Registrar in terms of subsections (4), (5) and (6) shall come into operation on a date mentioned in the approval.

(8) Exchange rules shall operate as a binding contract between:

- (a) the securities exchange and each exchange member; and,
- (b) a member and any other member,

in terms of which each of the parties agrees to observe and perform the provisions of the exchange rules.

Functions of a securities exchange

17. (1) A securities exchange may, if empowered by its constitution to do so, and subject to such requirements as the Registrar may consider necessary, carry on business other than the business of a securities exchange.

(2) A securities exchange:

- (a) shall enforce the exchange rules in accordance with the provisions of this Act;
- (b) shall ensure that its members, their officers and employees comply with, the provisions of this Act and the exchange rules;
- (c) may issue directives to govern the internal affairs of the securities exchange;
- (d) shall make listing requirements, after consultation with the Registrar which prescribe:
 - (i) the manner in which securities may be listed, removed or suspended from the list;
 - (ii) the requirements with which issuers of listed securities and of securities which are intended to be listed shall comply;
 - (iii) the conduct expected of issuers of listed securities and of directors, officers and agents of such issuers; and,
 - (iv) the standards of disclosure and corporate governance expected of issuers of listed securities;
- (e) shall supervise compliance by issuers of listed securities with the listing requirements, the exchange rules and this Act; and,
- (f) may do all other things necessary, incidental or conducive to the proper operation of a securities exchange and which are not inconsistent with this Act.

(3) The Registrar may, subject to ratification by the Board, temporarily take over one or more of the functions referred to in subsection (2).

Listing of securities

18. (1) A securities exchange:

- (a) shall keep a list of the securities that may be dealt in on the securities exchange;
 - (b) shall receive and consider, and may grant, defer or refuse, subject to conditions that it may determine, applications for the issue of securities to be included in the list;
 - (c) may include securities issued by it in its own list subject to the approval of and on the conditions prescribed by the Registrar; and,
 - (d) may charge the fees provided for in the listing requirements or the exchange rules.
- (2) A securities exchange shall, before refusing an application to include securities in the list:
- (a) inform the issuer of its intention to refuse the application;

- (b) give the issuer the reasons for the intended refusal; and,
- (c) call upon the issuer to show cause within a period specified by the securities exchange why the application should not be refused.

(3) Listing requirements are binding on issuers, their officers, employees and agents, and investors using the facilities of a securities exchange.

(4) Fees charged to issuers for the listing of securities shall, notwithstanding any other law, rank in pari passu with preferred creditors on the winding up of the issuer.

Removal or suspension of listing

19. (1) A securities exchange may, subject to this section, exchange rules and the listing requirements, and if it is in the public interest, remove securities from the list or suspend the inclusion of securities in the list.

(2) A securities exchange shall, subject to subsection (3) and before a removal or suspension referred to in subsection (1):

- (a) inform the issuer of the securities of its intention to remove or suspend;
- (b) give the issuer the reasons for the intended removal or suspension; and,
- (c) call upon the issuer to show cause, within a period specified by the securities exchange, why the removal or suspension should not be effected.

(3) If it is in the public interest, or if the listing requirements or the conditions determined by a securities exchange in respect of the listing of securities are not complied with, a securities exchange may order an immediate suspension, for a period not exceeding thirty (30) days, which period may be extended for further periods of thirty (30) days.

(4) If the inclusion of securities in the list has been suspended in terms of this section, a securities exchange may, despite subsections (1) and (3), permit members to settle transaction in respect of those securities for the sole purpose of fulfilling their obligations entered into in relation to those securities before the suspension.

(5) If an issuer requests a securities exchange to remove its securities from the list, but the securities exchange considers the securities to be eligible for continued inclusion in the list, the removal shall only be effective after the approval by the shareholders of the issuer in a manner specified by the securities exchange.

(6) If a securities exchange refuses an application for the inclusion of securities in the list as contemplated in section 18 (1) (b), or under subsection (1) removes securities from or suspends the inclusion of securities in the list, the issuer concerned shall notify every other exchange on which such securities are listed of the date of the refusal, removal or suspension.

(7) A licensed securities exchange may not, within a period of six months from the date referred to in subsection (6), grant an application for the inclusion of the securities concerned in the list kept by it, or allow trading in such securities, unless the refusal, removal or suspension has been set aside on appeal by the Registrar.

(8) If a securities exchange withdraws a refusal, removal or suspension before the expiry of the period of six months, the issuer concerned shall notify every other exchange on which the securities are listed accordingly, and the prohibition contemplated in subsection (6) lapses from the date of such withdrawal.

(9) A securities exchange referred to in subsections (6) and (7) shall, if it is aware of the listing of the same securities on other exchanges, also notify those exchanges of the refusal, removal, suspension or withdrawal, as the case may be.

Disclosure of information by issuers of listed securities

20. (1) A securities exchange may, by Notice in writing, require an issuer whose securities are included in the list to disclose to it, within a period specified in the Notice, any information at the issuer's disposal about such securities, or about the affairs of that issuer, that is in the public interest.

(2) A securities exchange may, after giving the issuer an opportunity of making representations to it, require the issuer to disclose that information to the registered holders of the securities within a further period specified by the securities exchange.

(3) Where an issuer has any objection to the disclosure of the information to the securities exchange or the registered holders of the securities, or to both, the securities exchange may, unless the issuer obtains a court order excusing it from such disclosure, suspend such securities from its list until such time as the required disclosure has been made to the satisfaction of the securities exchange.

(4) Where an issuer discloses information in terms of this section to the registered holders of securities that may influence the price of those securities, the issuer shall, at the same time, cause the information to be published in the local daily newspapers and the Gazette.

Establishment and maintenance of an Investor Protection Fund

21. (1) A securities exchange shall establish and maintain an investor protection fund or similar fund for the protection of investors, which shall be administered by the market committee on behalf of the securities exchange.

(2) The contributions to, and payments out of, the fund referred to in subsection (1) shall be made in accordance with the rules of a securities exchange or Rules prescribed by Registrar.

(3) The assets of the fund referred to in subsection (1) shall be the property of the securities exchange but shall be kept separate from all other property and shall be kept in trust for the purposes set out in this section.

(4) The Registrar may make Rules as to the:

- (a) moneys constituting the fund;
- (b) accounts to be maintained by the fund;
- (c) administration of the fund and powers of the market committee administering the fund;
- (d) minimum amount to be kept in the fund and provisions if fund is reduced below the minimum amount;
- (e) levies that may be imposed to meet liabilities of the fund;
- (f) the power of a securities exchange to make advances to the fund;

- (g) investment of moneys of the fund;
- (h) manner of lodging claims against the fund;
- (i) power of the market committee to settle claims;
- (j) power of the market committee to enter into contracts of insurance for purposes of the fund; or,
- (k) any other matter incidental to the establishment and maintenance of the fund.

(5) Where the Registrar is satisfied that adequate arrangements, other than those required under subsection (1) for the protection of investors exist, the Registrar may exempt securities exchange from the requirements of that subsection.

(6) On payment out of the fund referred to in subsection (1) of any moneys in respect of any claim under this section, the securities exchange shall be subrogated to the extent of such payment to all the rights and remedies of the claimant in relation to the loss suffered by him by reason of the defalcation on which the claim was based.

A securities exchange to provide assistance to the Registrar and disciplinary powers of the Registrar

22. (1) A securities exchange shall provide such assistance to the Registrar as the Registrar reasonably requires for the performance of the functions and duties of the Registrar, including the furnishing of such returns and providing such information relating to its business or in respect of such dealing in securities or any other specified information as the Registrar may require for the proper administration of this Act.

(2) Where a securities exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the securities exchange, it shall, within seven (7) days, give to the Registrar in writing, particulars of the:

- (a) name of the member;
- (b) reason for and nature of the action taken;
- (c) amount of the fine, if any; and,
- (d) period of the suspension, if any.

(3) The Registrar may review any disciplinary action taken by a securities exchange under subsection (2) and may affirm or set aside the decision of a securities exchange after giving the member and the securities exchange an opportunity to be heard.

(4) Nothing in this section shall preclude the Registrar, in any case where a securities exchange fails to act against a member, from suspending, expelling or otherwise disciplining that member.

(5) The Registrar shall, before taking any action as contemplated in subsection (4), give the member and the securities exchange an opportunity to be heard.

(6) Where the Registrar is satisfied that an officer of a securities exchange:

- (a) has wilfully contravened or wilfully caused that securities exchange to contravene this Act or the Rules or, where applicable, listing rules of that securities exchange;

- (b) has, without reasonable justification or excuse, failed to enforce compliance with this Act or the Rules or, where applicable, listing rules of that securities exchange, by that securities exchange or a member of that securities exchange or a person associated with that member;
- (c) has failed to discharge the duties or functions of his or her office;
- (d) is an undischarged bankrupt whether in Swaziland or elsewhere;
- (e) has had execution against him or her in respect of a judgment debt returned unsatisfied in whole or in part;
- (f) has, whether in Swaziland or elsewhere, made a compromise or scheme of arrangement with his or her creditors, being a compromise or scheme of arrangement that is still in operation; or,
- (g) has been convicted, whether in Swaziland or elsewhere, of an offence involving fraud or dishonesty or the conviction for which involved a finding that he acted fraudulently or dishonestly,

the Registrar may, if the Registrar thinks it is necessary in the interest of the public or for the protection of investors, direct by Notice in writing that securities exchange to remove the officer from office or employment and that securities exchange shall comply with such Notice.

(7) The Registrar shall not direct a securities exchange to remove an officer from office or employment without giving the securities exchange an opportunity to be heard.

Power of the Registrar to issue written directives to a securities exchange

23. (1) The Registrar may, where it appears to be in the public interest, issue written directives to a securities exchange:

- (a) with respect to trading on or through the facilities of that securities exchange or with respect to any security listed on that securities exchange;
- (b) with respect to the manner in which a securities exchange carries on its business, including the manner of reporting off-market purchases; or,
- (c) with respect to any other matters which the Registrar considers necessary for the effective administration of this Act,

and the securities exchange shall comply with any such written directive.

(2) A securities exchange which, without reasonable excuse, fails or refuses to comply with a written directive given under subsection (1), commits an offence and is liable on conviction to a fine not exceeding twenty thousand Emalangeni (E20,000) and, in the case of a continuing offence, to a further fine of five thousand Emalangeni (E5,000) for every day or part thereof during which the offence continues.

Attendance of meetings of a securities exchange and furnishing of certain documents to Registrar

24. (1) The Registrar or a person nominated by the Registrar may attend any meeting of a securities exchange or the committee of a securities exchange or a subcommittee of that committee and take part in all non-voting proceedings at such meeting.

(2) The chairperson or an executive officer of a securities exchange shall, on request, furnish the Registrar with all notices, minutes and documents which are furnished to the members of a securities exchange and the members of the executive committee or a sub-committee of that committee.

Restriction on shareholdings on a licensed securities exchange

25. (1) A person, company or combination of persons or companies acting jointly or in concert shall not, without the prior approval of the Registrar, beneficially own or exercise control or direction over more than five (5) per cent, or such other percentage as may be prescribed under subsection (3), of any class or series of voting shares of a licensed securities exchange.

(2) The Registrar may, in granting approval to a person, company or transaction, for the purposes of subsection (1), impose such terms and conditions as the Registrar considers appropriate.

(3) The Minister may, by Notice published in the Gazette, prescribe a percentage for the purposes of subsection (1) and may prescribe different percentages for different classes of persons or companies.

PART V
LICENSING OF DEALERS, INVESTMENT ADVISERS
AND THEIR REPRESENTATIVES

Dealer's licence

26. (1) A person shall not carry on the business of dealing in securities or hold himself or herself out as carrying on such business unless that person is the holder of a dealer's licence issued under this Part.

(2) Subsection (1) shall not apply to an exempt dealer.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Emalangeni (E100,000) or to imprisonment for a term not exceeding three (3) years or to both such fine and imprisonment.

Dealer's representative's licence

27. (1) A person shall not act as a dealer's representative or hold himself out to be a dealer's representative unless that person is the holder of a dealer's representative's licence issued under this Part.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten thousand Emalangeni (E10,000) or to imprisonment for a term not exceeding one (1) year or to both such fine and imprisonment.

Investment adviser's licence

28. (1) A person shall not act as an investment adviser or hold himself or herself out to be an investment adviser unless that person is the holder of an investment adviser's licence issued under this Part.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Emalangeni (E100,000) or to imprisonment for a term not exceeding three (3) years or to both such fine and imprisonment.

Investment adviser's representative's licence

29. (1) A person shall not act as an investment adviser's representative or hold himself or herself out to be an investment adviser's representative unless that person is the holder of an investment adviser's representative's licence issued under this Part.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Emalangeni (E100,000) or to imprisonment for a term not exceeding three (3) years or to both such fine and imprisonment.

Application for a licence or renewal of a licence

30. (1) An application for a licence or for the renewal of a licence issued under this Part shall be made to the Registrar in the form and manner prescribed by the Registrar and shall be accompanied by the prescribed fee and, in the case of an application for renewal of a licence, such application shall be made not later than one month before the expiry of the licence.

(2) The Applicant may be required to supply the Registrar with such further information, in relation to the application, as the Registrar considers necessary.

(3) The Registrar shall not refuse to grant or renew a licence without first giving the applicant or the holder of a licence, an opportunity of being heard.

Grant of dealer's licence or investment adviser's licence

31. (1) A dealer's licence shall only be granted to a company incorporated under the Companies Act, 2009, if it meets:

- (a) the capital adequacy standards prescribed by the Registrar under section 74 of this Act, and,
- (b) minimum financial requirements as may be determined by rules of a securities exchange as approved by the Registrar.

(2) In cases where an investment adviser intends to carry on a class of business involving the management of a portfolio of securities on behalf of clients for investment purposes, an investment adviser's licence shall only be granted if the investment adviser meets and continues to meet the capital adequacy standards prescribed by the Registrar under section 74 of this Act.

(3) Where an application is made for the grant or renewal of a dealer's licence or investment adviser's licence, the Registrar shall, subject to section 39 (3) and the Regulations made and Notices issued under this Act, refuse the application if:

- (a) in the case of an applicant who is a natural person, the:
 - (i) applicant has been declared insolvent whether in Swaziland or elsewhere;
 - (ii) applicant is not ordinarily resident in Swaziland;
 - (iii) applicant has been convicted, either within Swaziland or elsewhere, within a period of ten (10) years immediately preceding the date on which the application was made, of an offence involving dishonesty punishable on conviction with imprisonment for a term of not less than three (3) months;

(iv) Registrar is not satisfied as to the educational qualifications or experience of the applicant having regard to the nature of the duties of a holder of an investment adviser's licence;

(v) Registrar has reason to believe that the applicant is not a fit and proper person; or,

(vi) Registrar has reason to believe that the applicant will not perform the duties of a holder of an investment adviser's licence efficiently, honestly and fairly; or,

(b) in the case of an applicant that is a company the:

(i) company is in the course of being wound up under the Companies Act, 2009;

(ii) company is a company in respect of property of which a liquidator has been appointed under the Companies Act, 2009;

(iii) company has, whether within or outside Swaziland, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation; or,

(iv) Registrar has reasonable cause to believe that the officers of the applicant who are to perform duties in connection with the holding of the dealer's licence or investment adviser's licence, as the case may be, are not fit and proper persons.

(4) In considering whether a person is a fit and proper person in terms of this section, the Registrar shall have regard to the:

(a) financial status;

(b) educational or other qualifications or experience having regard to the nature of the application;

(c) ability to perform his proposed function efficiently, honestly and fairly; and,

(d) reputation, character, financial integrity and reliability of that person.

(5) For the purposes of this section, the Registrar may have regard to any information in the possession of the Registrar, whether furnished by the applicant or not.

(6) For the purposes of subsection (4), the Registrar may take into account any matter relating to:

(a) any person who is or is to be employed by, or associated with, the applicant for the purposes of the proposed business to which the application relates;

(b) any person who will be acting as a representative in relation to such business; or,

(c) where the applicant is a company, any substantial shareholder, director or officer of the company, any other company in the same group of companies or to any director or officer of any such company.

(7) In subsection (6), "substantial shareholder" means, in relation to a company, a person who has an interest in shares in the company:

- (a) the nominal value of which is equal to or more than twenty five percent (25%) or such other percentage as the Minister may, by Notice in the Gazette determine, of the issued share capital of the company; or
- (b) which entitles the person to exercise or control the exercise of twenty-five percent (25%) or such other percentage as the Minister may, by Notice in the Gazette determine, or more of the voting power at any general meeting of the company.

(8) An exempt dealer who meets the requirements of subsection (1) of this section may apply to the Registrar for a licence to carry on the business of dealing in securities.

(9) An exempt dealer who has been granted a licence under subsection (8) shall be subject to all the requirements of this Part.

Grant of representative's licence

32. Subject to section 30 (3) and the Regulations made under this Act, the Registrar shall only grant or renew a dealer's representative's licence or investment adviser's representative's licence if, after consideration of the application, the Registrar does not have reason to believe that the applicant will not perform the duties of the holder of a dealer's representative's or an investment adviser's representative's licence, as the case may be, efficiently, honestly and fairly.

Power of Registrar to impose conditions or restrictions

33. (1) The Registrar may grant or renew a licence under this Part subject to such conditions or restrictions as the Registrar thinks fit and the Registrar may, at any time by written notice to a licence holder, vary any condition or restriction or impose further conditions or restrictions.

(2) Without limiting the generality of subsection (1), the Registrar may, in granting or renewing a dealer's licence, impose such conditions or restrictions as the Registrar deems fit as to the class or classes of business that a dealer may carry on.

(3) Without limiting the generality of subsection (1), the Registrar may, in granting or renewing an investment adviser's licence, impose such conditions or restrictions as to the class or classes of business that an investment adviser may carry on, including a condition or restriction that the investment adviser shall:

- (a) only carry on the class of business of advising others concerning securities;
- (b) only carry on the class of business of issuing or promulgating analyses or reports concerning securities;
- (c) subject to the execution of a mandate in the form prescribed by the Registrar, only carry on a class of business involving the management of a portfolio of securities on behalf of clients for investment purposes; or,
- (d) only carry on any of the classes of business in paragraphs (a), (b) and (c) in combination with each other.

(4) A person who contravenes or fails to comply with any condition of, or restriction in, a licence granted to that person commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Emalangeni (E100,000) and, in the case of a continuing offence, to a further fine of five thousand Emalangeni (E5,000) for every day or part thereof during which the offence continues.

The Registrar may issue written notices

34. (1) Where it appears to be necessary or expedient in the public interest or in the interest of the securities industry, the Registrar may, by notice in writing, direct any holder or class of holders of a dealer's licence, an investment adviser's licence or a representative's licence to comply with such requirements as the Registrar may specify in the notice.

(2) Without prejudice to the generality of subsection (1), any requirement specified in a notice issued by the Registrar under that subsection may relate to:

- (a) the standards to be maintained by the person concerned in the conduct of that person's business; and,
- (b) the type and frequency of financial returns and other information to be submitted to the Registrar.

(3) A holder of a dealer's licence, an investment adviser's licence or a representative's licence who contravenes or fails to comply with any of the requirements specified in a notice issued under subsection (1) commits an offence and is liable on conviction to a fine not exceeding twenty thousand Emalangeni (E20,000), and, in the case of a continuing offence, to a further fine of five thousand Emalangeni (E5,000) for every day or part thereof during which the offence continues.

Revocation and suspension of licences

35. (1) A licence under this Part shall be deemed to be revoked, in the case of:

- (a) a natural person, if that person dies; or,
- (b) a company, if the company has been wound up.

(2) The Registrar may revoke a licence:

- (a) in the case of a natural person if:
 - (i) a writ of execution in respect of that person has not been satisfied;
 - (ii) that person ceases to carry on the business for which that person was licensed;
 - (iii) that person has been declared insolvent in Swaziland or elsewhere;
 - (iv) in the case of a representative, the licence of the dealer or investment adviser in relation to whom the licence was granted, is revoked;
 - (v) the Registrar has reason to believe that person has not performed his or her duties efficiently, honestly or fairly;
 - (vi) that person is convicted of an offence involving dishonesty punishable by imprisonment for a term of not less than three (3) months; or,
 - (vii) that person contravenes or fails to comply with any condition or restriction applicable in respect of the licence or any other provision in this Act; or,
- (b) in the case of a company if:
 - (i) it is being or will be wound up;

- (ii) a writ of execution in respect of it has not been satisfied;
- (iii) a liquidator has been appointed whether by the court or creditors in respect of the company's property;
- (iv) it has entered into any composition or arrangement with its creditors;
- (v) it ceases to carry on the business for which it was licensed;
- (vi) the Registrar has reason to believe that the company or any of its directors or employees has not performed his duties efficiently, honestly or fairly; or,
- (vii) the company contravenes or fails to comply with any conditions or restrictions applicable in respect of the licence or any other provision in this Act.

(3) In a case to which subsection (2) applies, the Registrar may, instead of revoking a licence, suspend the licence for a specific period.

(4) The Registrar shall not revoke or suspend a licence under subsection (2) or (3) without first giving such person an opportunity of being heard.

(5) A person whose licence is revoked or suspended under this section shall, for the purpose of this Part, be deemed not to be licensed as from the date that the Registrar revokes or suspends the licence, as the case may be.

(6) A revocation or suspension of a licence shall not operate so as to:

- (a) avoid or affect any agreement, transaction or arrangement relating to the trading in securities entered into by any person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the licence; of,
- (b) affect any right, obligation or liability arising under any such agreement, transaction or arrangement.

Membership of a securities exchange

36. A person who holds a dealer's licence shall not continue to hold that licence if that person ceases to be a member of a securities exchange.

PART VI COLLECTIVE INVESTMENT SCHEMES

Interpretation

37. In this Part, unless the context otherwise requires:

"assets" mean the investments comprised in, or constituting, a portfolio of a collective investment scheme and includes any income accruals derived or resulting from the investments in the portfolio, which are held for or are due to the investors in that portfolio;

"authorised agent" means a person authorised by a manager of a collective investment scheme to solicit investments in a portfolio from members of the public or to perform other functions on behalf of such manager;

"authorised collective investment scheme" means a collective investment scheme authorised under this Part;

"certificate" means a document which serves as evidence of the title of the holder thereof to one or more participatory interests acquired by the person in a portfolio;

"custodian" means, in relation to a scheme other than a unit trust scheme, any person who, whether or not under a trust, is entrusted with the custody of the property of a scheme;

"deed" means the agreement between a manager and a trustee or custodian, or the document of incorporation whereby a collective investment scheme is established and in terms of which it is administered, and includes a trust deed;

"fixed property company" means a company where all the issued shares which are included in a portfolio and the principal business of which consists in the acquisition and holding of:

- (a) urban immovable property or any undivided share therein; or,
- (b) such other immovable property, undivided share therein, or leasehold in respect thereof, as the Registrar may have approved;

"foreign scheme" means a scheme incorporated outside Swaziland;

"income accruals" means any dividends or interest or any other income for distribution received by the trustee or custodian or the manager on behalf of holders of participatory interests;

"investor" means a participant;

"open-ended investment company" means a collective investment scheme under which:

- (a) the property of the scheme belongs beneficially to, and is managed by or on behalf of, a company having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that company; and,
- (b) the rights of the participants are represented by shares in or securities of that company which:
 - (i) the participants are entitled to have redeemed or repurchased, or which are redeemed or repurchased from them by, or out of funds provided by, that company; or
 - (ii) the company ensures can be sold by the participants on a securities exchange at a price related to the value of the property to which they relate;

"participant" means the holder of a participatory interest in a portfolio;

"participatory interest" means any interest, undivided share or share, whether called a participatory interest, unit or by any other name, and whether the value of such interest, unit, undivided share or share remains constant or varies from time to time, which may be acquired by an investor in a portfolio;

"portfolio" means a group of assets including any amount of cash in which members of the public are invited or permitted by a manager to acquire a participatory interest or, participatory interest of a specific class pursuant to a collective investment scheme;

property shares" means securities in and of a:

- (a) fixed property company; or,
- (b) holding company, which has no subsidiaries other than fixed property, companies, which are wholly, owned subsidiaries.

"scheme" means a collective investment scheme;

"trustee" means, in relation to a unit trust scheme, the person holding the property of the scheme on trust for the participants;

"trust deed" means, in relation to a unit trust scheme, the agreement between the manager and the trustee constituting the trust for the purposes of the scheme;

"underlying assets" means, in relation to a portfolio, the assets comprised in or constituting the portfolio and includes any moneys derived or resulting from the management of the portfolio which are held by or are due to the manager or the trustees or custodians for the benefit of the holders of certificates in that portfolio; and,

"unit trust scheme" means a collective investment scheme under which the property of the scheme is held on trust for the participants.

Restrictions on promotion of collective investment schemes

38. (1) A person shall not:

- (a) issue or cause to be issued any advertisement inviting persons to become or offer to become participants in a scheme, or containing information calculated to lead directly or indirectly to persons becoming or offering to become, participants in a scheme; or,
- (b) advise or procure any person to become or offer to become a participant in a scheme,

unless the scheme is authorised by the Registrar under this Part.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred and fifty thousand Emalangeni (E150,000) or to imprisonment for a term not exceeding four (4) years or to both such fine and imprisonment.

Application for authorisation

39. (1) An application for the authorisation of a scheme shall be made to the Registrar by the manager or proposed manager of the scheme.

(2) An application shall be accompanied by the :

- (a) scheme's constitution;
- (b) scheme's prospectus in the form prescribed by the Registrar;
- (c) manager's latest audited report;
- (d) trustee's or custodian's latest audited report; and,
- (e) fees prescribed by the Registrar.

(3) The Registrar may require the applicant to furnish such additional information, as the Registrar may deem necessary.

Authorisation of schemes by Registrar

40. (1) The Registrar may, on an application being made in the manner and form prescribed by the Registrar, and after being furnished with all such information as the Registrar may require, authorise a collective investment scheme for the purposes of this Part if the scheme complies with the provisions of section 41.

(2) An authorisation under subsection (1) may be granted subject to such terms and conditions, as the Registrar considers necessary or desirable for the protection of investors.

(3) The Registrar shall inform the applicants of the decision not later than three (3) months after the date on which the application was received or, if within that period the Registrar has required the applicants to furnish further information in connection with the application, from the date on which that information is furnished.

Conditions for authorisation of schemes

41. Subject to the provisions of this Part, the Registrar may only authorise a collective investment scheme if the:

- (a) scheme has both a manager and a trustee or custodian;
- (b) manager of the scheme is incorporated in Swaziland and has its registered office in Swaziland;
- (c) manager and trustee or custodian of the scheme are different persons who are independent of each other;
- (d) manager and trustee or custodian of the scheme are each registered by the Registrar;
- (e) constitution and prospectus comply with the relevant provisions of this Part and are in a form acceptable to the Registrar;
- (f) name of the scheme is approved by the Registrar;
- (g) purpose of the scheme shall be reasonably capable of being successfully carried into effect;
- (h) scheme either:
 - (i) entitles participants to have their participatory interests redeemed in accordance with the scheme at a price related to the net value of the property to which the participatory interests relate and determined in accordance with the scheme; or
 - (ii) requires the manager to ensure that a participant is able to sell his participatory interests on a securities exchange at a price not significantly different from that mentioned in sub-paragraph (i) and,
- (i) the manager has appointed an auditor who complies with the requirements of this Part.

Revocation of authorisation

42. (1) The Registrar may revoke the authorisation of a collective investment scheme if the Registrar determines that:

- (a) any of the requirements for the granting of authorisation are no longer satisfied;
- (b) it is undesirable in the interests of the participants or potential participants that the scheme should continue to be authorised; .
- (c) the manager, trustee or custodian of the scheme has contravened any provision of this Act or, in purported compliance with any such provision, has furnished the Registrar with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act; or,
- (d) the name of the scheme has been changed without the prior approval of the Registrar.

(2) For the purposes of subsection (1) (b), the Registrar may take into account any matter relating to the scheme, the manager, trustee or custodian, a director or controller of the manager, trustee or custodian or any person employed by or associated with the manager, trustee or custodian in connection with the scheme.

Restriction on management of collective investment schemes

43. (1) A person who is not a company which has been registered as a manager under this Part or its authorised agent shall not manage or carry on any scheme.

(2) A person who is not a company which:

- (a) is registered under the Companies Act, 2009; and,
- (b) meets the capital adequacy standards prescribed by the Registrar under section 74 of this Act,

shall not be or remain registered as a manager in terms of this Act.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Emalangeni (E100,000) or to imprisonment for a period not exceeding three (3) years or to both such fine and imprisonment.

Procedure in connection with registration of managers

44. (1) A company which seeks to be registered as a manager under this Part shall lodge with the Registrar an application in the manner and form prescribed by the Registrar disclosing the prescribed particulars and pay the prescribed application fee.

(2) The Registrar may call upon any company which has applied for registration under subsection (1) to furnish the Registrar with any further information, which is relevant to the application.

(3) If the Registrar is satisfied that the company meets the requirements of section 43, the Registrar shall, on such additional conditions as the Registrar may deem fit, register the applicant as a manager and issue to it a registration certificate in the prescribed form.

Cancellation or suspension of registration of a manager

45. (1) The Registrar may at any time, subject to the provisions of subsection (2), cancel or suspend, for a period not exceeding twelve (12) months at a time, the registration of a company to act as a manager under this Part if:

- (a) the Registrar is satisfied that the company has contravened or failed or neglected to comply with any provision of this Act or with any requirements lawfully given or imposed under this Act, and that such failure or neglect has resulted or is calculated to result in serious prejudice to the interests of the public or of the holders of certificates issued by the company;
- (b) the Registrar is satisfied, after an investigation in terms of this Act has been held, that the manner in which the business of the company is carried on is unsatisfactory or not calculated to serve the best interests of holders of certificates; carried on is unsatisfactory or not calculated to serve the best interests of holders of certificates;
- (c) it appears that the registration was obtained through fraud on the part of the manager;
or
- (d) the company is being wound up, either voluntarily or by the court.

(2) The Registrar shall not cancel or suspend the registration of a manager for any reason mentioned in subsection (1) (a), (b) or (c) unless the Registrar has:

- (a) notified the company concerned of the intention to do so and of the grounds upon which the Registrar proposes to do so; and,
- (b) allowed the company fourteen (14) days to make any representations in connection with the proposed cancellation or suspension.

(3) Where the registration of a manager is cancelled in terms of subsection (1) (a), (b) or (c), the provisions of this Part with regard to continuance or the winding up of a scheme in the event of the winding-up of the manager shall *mutatis mutandis* apply.

(4) The Registrar may, in any such case, direct the manager whose registration has been cancelled to defray, in whole or in part, expenses incurred in continuing the management of the scheme, or in realising any of the underlying assets, including any commission to which a trustee or a custodian or a person appointed to take over the duties and obligations of a trustee or a custodian, may be entitled under this Part.

(5) Where the registration of a manager has been suspended under subsection (1), the manager shall not, during the period of suspension, issue any fresh certificates but shall, in respect of certificates already issued, continue the management of the scheme and deal with such certificates in all respects as it would have been bound to do so had its licence not been suspended.

Determination of exchange value

46. (1) Whenever a manager is unable to determine the exchange price for securities quoted on a securities exchange for the purposes of a scheme, a fair exchange price for such securities shall, at the request of such manager, be determined by a dealer who is a member of a licensed securities exchange.

(2) Where the manager does not agree with the price determined by a dealer, it shall refer the matter to the committee of the securities exchange concerned, which shall thereupon determine the fair exchange price for such securities and whose decision shall be final.

Accounts, returns and reports to be kept and rendered by a manager

47. (1) Every manager shall in respect of itself and every collective investment scheme administered by it:

- (a) maintain accounting records and prepare annual financial statements in conformity with generally accepted accounting practice;
- (b) preserve such records in a safe place for a period of at least five (5) years as from the date of the latest entry therein; and,
- (c) cause such records and annual financial statements to be audited, not later than three (3) months after the financial year-end of the manager or collective investment scheme, as the case may be, or such later date as the Registrar may allow, by an auditor whose appointment has been approved by the Registrar in terms of section 67.

(2) Every manager shall, not less than once in every year, transmit to every holder of a certificate in the scheme managed by the manager and to the Registrar, an audited balance sheet and account of income and expenditure and such other statements as the Registrar may prescribe in regard to the operations of that scheme during the period which ended not more than three (3) months before the date on which such balance sheet, account and statements are so transmitted, and in regard to its position as at the end of that period.

(3) Every manager shall, not less than once in every half year, transmit to every holder of a certificate in the scheme managed by the manager and to the Registrar, a report on the scheme in such manner and form as the Registrar may prescribe.

(4) A manager shall keep available, for inspection during ordinary office hours at its registered office, copies of the balance sheet, account and statements referred to in subsection (1) which shall be kept available at the registered office of the manager.

(5) A manager shall, in addition, within a period of thirty (30) days after receipt of a written request from the Registrar, or within such further period thereafter as the Registrar may allow, lodge with the Registrar such further information and explanations in connection with any balance sheet, account or statement referred to in subsection (1) as may be specified in the request.

(6) A manager shall, in the manner prescribed by the Registrar, lodge with the Registrar:

- (a) copies of all advertisements, brochures and pamphlets proposed to be published by the company or any of its authorised agents, and all proposed additions and variations thereto, signed and certified in the prescribed manner by or on behalf of the directors of the manager; and,
- (b) a copy of every return or Notice which the company is required to furnish to the Registrar of Companies under the Companies Act, 2009.

(7) The Registrar may exempt a manager to such extent and on such conditions as the Registrar may deem fit, from the obligations to lodge with the Registrar a copy of any advertisement, brochure or pamphlet prior to its publication;

Provisions with regard to contents of price lists, advertisements, brochures and similar documents

48. (1) Where in any price list, advertisement, brochure or similar document published by a manager or by any of its authorised agents for the purpose of promoting the sale of participatory interests, the price of any unit is mentioned or a particular portfolio is referred to, the under-mentioned particulars shall be clearly set out therein with reference to each such unit or portfolio, namely:

- (a) the manager's initial charge expressed as a percentage of the made-up price of the unit offered;
- (b) the manager's service charge;
- (c) an undertaking by the manager to repurchase any number of participatory interests offered to it on the basis of prices calculated in accordance with the requirements of this Part and on the terms and conditions set forth in the deed; and,
- (d) whether or not securities in respect of wasting assets included in the portfolio concerned are amortised.

(2) Any reference in a price list, advertisement, brochure or similar document published by a manager or by any of its authorised agents, to the yield to be derived from any participatory interests offered for sale by the company, shall be limited:

- (a) in the case of any such document published after the lapse of a period of twelve (12) months following the date of the first offer of participatory interests to the public, to particulars of the yield, calculated in the manner for which dividends have been declared, and a statement as to any facts likely to influence future yield; and,
- (b) in the case of any such document published within the period referred to in paragraph (a), to information as to the probable yield calculated in a manner clearly set out in such documents.

(3) Where, in any price list, advertisement, brochure or similar document published by a manager or any of its authorised agents, it is stated that holders of certificates issued by the manager are entitled to participate in its profits, there shall also be stated what amount was so distributed during the previous financial year, expressed as a percentage of the aggregate exchange value, as the close of that year, of all underlying assets then held on behalf of certificate holders.

(4) There shall be included in every price list, advertisement, brochure or similar document published by a manager or any of its authorised agents in which such manager's participatory interests are commended to the public, a statement in clear and unambiguous terms, to the effect that the value of the portfolio is subject to fluctuation from time to time relative to the value of the underlying assets comprised in the portfolio.

(5) The Registrar may disapprove of the terms of any price list, advertisement, brochure or similar document relating to a scheme published or proposed to be published by a manager or any of its authorised agents if, in the opinion of the Registrar, the said terms are calculated to mislead or are, for any other good and sufficient reason, objectionable.

(6) Where the Registrar disapproves of the terms of any price list, advert or brochure or similar document relating to a scheme, the Registrar may direct the manager to discontinue or refrain from publication of any such document, or to introduce such variations or modifications of its terms as the Registrar may specify.

Exercise of voting power by manager

49. Where a manager exercises voting powers conferred by underlying assets held in a scheme, the manager shall owe a duty to the holders of certificates issued pursuant to that scheme to exercise those voting powers in a manner calculated to serve the interests of those holders without, however, entirely subordinating the interest of the company in which the voting powers are held, to the immediate interest of such holders.

Restriction on loans against security of participatory interests

50. A manager shall not:

- (a) sell or offer for sale any participatory interests under a scheme except by requiring payment of the full purchase price of the participatory interests to be made upon the acceptance by the manager or any of its duly authorised agents, of the purchaser's offer for the purchase of participatory interests; or,
- (b) lend or advance any money on the security of participatory interests sold by it to any other manager in relation to which it is either a holding company or a subsidiary within the meaning of those terms as defined in section 2 of this Act.

Manager or director not to derive unauthorised gain from acquisition of underlying assets

51. A manager or director shall not, either directly or indirectly, derive any pecuniary advantage from the acquisition or sale by such manager of any assets of a portfolio except such advantage as may accrue to the manager, in the ordinary course of its business, by virtue of:

- (a) any difference between the price at which it acquires the underlying assets and the price at which participatory interests therein are subsequently sold; or,
- (b) any underwriting business done by the manager.

Permissible deductions from a portfolio

52. Unless otherwise prescribed by the Registrar, no amounts other than:

- (a) charges payable on the buying or selling of assets for the portfolio such as brokerage or stamp duties;
- (b) auditors fees., bank charges., trustee and custodian fees and other levies or taxes;
- (c) share creation fees payable to the Registrar of Companies for the creation of authorised capital or the costs incurred in the creation and issue of participatory interests;
- (d) the agreed and disclosed service charges of the manager; and,
- (e) any costs incurred as a result of a collective investment scheme being listed on a securities exchange in terms of section 66.

may be deducted from a portfolio.

Change of investments and furnishing of a list of underlying assets

53. (1) A manager may, if it considers it in the best interests of the holders of certificates to do so, sell or dispose of any of the underlying assets comprised in a portfolio, and shall substitute for such underlying assets or cash equal in value to the net amount realised for the assets disposed of, less the compulsory charges in respect of the assets substituted.

(2) Every manager shall, once in every three (3) months, furnish to the Registrar a full list of all the underlying assets comprised in any portfolio managed by it, and such list shall be kept available at the registered office of the manager for inspection during ordinary office hours by any holders of participatory interests or other person *bona fide* interested in the purchase of certificates from the manager.

Appointment and termination of appointment of trustee or custodian

54. (1) A manager shall appoint, depending on the structure of the collective investment scheme, either a trustee or a custodian for its scheme.

(2) A person shall not become or act as a trustee or custodian unless that person is registered as such under section 55.

(3) When the appointment of a trustee or custodian is terminated, otherwise than as contemplated in section 58, that trustee or custodian shall submit a report to the Registrar in which it is stated:

- (a) whether to its knowledge any irregularity or undesirable practice in the conduct of the affairs of the scheme which has caused or is likely to cause financial loss to investors in a portfolio of the scheme is contemplated; has taken place; or is taking place;
- (b) particulars of the irregularity or undesirable practice; and,
- (c) the reason, if known, or the presumable reason for the termination of its appointment.

(4) A trustee or custodian, who intends to retire from an appointment in terms of this section, shall give not less than six months' notice of such intention to the manager and to the Registrar.

(5) A manager shall, during the period of not less than six (6) months' notice of such intention, take steps to appoint as trustee or custodian some other person competent to act as such in terms of section 55.

(6) Where a manager fails to take the steps mentioned in subsection (5) within the said period of six months, the Registrar may, after consultation with the manager, direct the manager to appoint as trustee or custodian a competent person nominated by the Registrar.

(7) When it is impracticable for a trustee or custodian to perform any or all its duties under section 56, it may appoint a representative which is independent from the manager and any of its agents, to perform such duties.

(8) A trustee or custodian of a scheme who has appointed a representative as contemplated in subsection (7), is not divested of the functions referred to in that sub-section.

Qualifications of trustees or custodians

55. (1) A person other than:

- (a) a company registered as a company under the Companies Act, 2009;
- (b) an institution licensed to carry on business as a banking institution under the Financial Institutions Act, 2005; or,
- (c) an institution which is registered as an insurer under the Insurance Act, 2005;

shall not become or act as a trustee or custodian under a scheme.

(2) A company or institution referred to in subsection (1) shall not become or act as a trustee or custodian under a scheme unless it:

- (a) maintains capital and reserves together amounting to not less than an amount prescribed by the Registrar; and,
 - (b) has been registered by the Registrar as a trustee or custodian and is in possession of a valid certificate setting forth the fact of such registration.
- (3) The Registrar may not register any company or institution as a trustee or custodian under this section unless the Registrar is satisfied that:
- (a) the company or institution is not, in relation to the manager, either a holding company, or a subsidiary or fellow subsidiary company within the meaning of those terms as defined in section 2 of this Act, and,
 - (b) the general financial and commercial standing and independence of the company or institution is such as to fit it for assuming the functions of a trustee or custodian and that the company or institution is by reason of the nature of its business sufficiently experienced and equipped to assume such functions.

(4) The Registrar may revoke or suspend registration already granted if at any time thereafter the Registrar ceases to be satisfied that the requirements referred to in subsection (3) are met by the trustee or custodian.

(5) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Emalangeni (E100,000) or to imprisonment for a period not exceeding three (3) years or to both such fine and imprisonment.

Duties and obligations of trustee or custodian

56. (1) A trustee or custodian, whether it became such before or after the commencement of this Act, shall:

- (a) verify that the sale, issue, repurchase, redemption and cancellation of participatory interests effected by or on behalf of a scheme are carried out in accordance with this Part and in accordance with the deed;
- (b) verify that the selling or repurchase price of participatory interests is calculated in accordance with this Part and the deed;

- (c) carry out the instructions of the manager unless they are inconsistent with this Part or the deed;
- (d) verify that in transactions involving the assets of a scheme any consideration is remitted to it within time limits which are acceptable market practice in the context of a particular transaction;
- (e) verify that the income accruals of a portfolio are applied in accordance with this Part and the deed;
- (f) enquire into and prepare a report on the administration of the scheme by the manager during each annual accounting period, in which it shall be stated whether the collective investment scheme has been administered in accordance with the:
 - (i) limitations imposed on the investment and borrowing powers of the manager by this Part; and,
 - (ii) provisions of this Part and its deed;
- (g) send the report referred to in paragraph (f) to the Registrar and to the manager in good time to enable the manager to include a copy of the report in its annual report;
- (h) subject to subsection (2), create or cancel participatory interest in accordance with the conditions laid down in the deed and on receipt of written instruction from the manager; and,
- (i) ensure that:
 - (i) there is a legal separation of assets held on trust or under custody and that the legal entitlement of investors to such assets is assured and,
 - (ii) appropriate internal control systems are maintained and that records clearly identify the nature and value of all assets under custody, the ownership of each asset and the place where documents of title pertaining to each asset are kept.

(2) A trustee or custodian may refuse to create or cancel participatory interests considers that such creation or cancellation of participatory interests will prejudice the interest of investors;

(3) A trustee or custodian shall report to the manager any irregularity or undesirable practice concerning the collective investment scheme of which it is aware and, if steps to rectify the irregularity or practice in question are not taken to the satisfaction of the trustee or custodian it shall as soon as possible report such irregularity or undesirable practice to the Registrar.

(4) A trustee or custodian shall satisfy itself that every income statement, balance sheet or other prescribed return prepared by the manager in terms of section 47 fairly presents the assets and liabilities, as well as the income and distribution of income, of every portfolio of the collective investment scheme administered by the manager.

(5) At the request of the trustee or custodian, every director or employee of the manager shall submit to the trustee or custodian any book or document or information relating to the administration by the manager of its collective investment scheme which is in its possession or at its disposal, and which the trustee or custodian may deem necessary to perform its functions as trustee or custodian.

(6) A person shall not interfere with the performance by a trustee or custodian of its functions under this Part.

(7) A trustee or custodian of a scheme which fails to perform any of its duties referred to in this section, commits an offence and is liable on conviction to a fine not exceeding two hundred thousand Emalangeni (E200,000) or to imprisonment for a term not exceeding five (5) years or both such fine and imprisonment.

Liability of trustee or custodian in respect of loss of assets

57. A trustee or custodian shall indemnify the manager and investors against any loss or damage suffered in relation to any money or other assets in the custody of the trustee or custodian where the loss or damage is caused by any willful or negligent act or omission by trustee or custodian.

Retirement of a trustee or custodian

58. (1) Every trustee or custodian under a scheme, whether appointed before or after the commencement of this Act shall, if it intends to retire from the scheme, give not less than six (6) month's notice of such intention to the manager and to the Registrar.

(2) A manager shall, during the period referred to in (1), take steps to substitute as trustee or custodian under the scheme some other person competent to act as such.

(3) If a manager fails to take the steps mentioned in subsection (2) within the said period of six (6) months, the Registrar may, after consultation with the manager, direct the manager to appoint as trustee or custodian under the deed a competent person, nominated by the Registrar, who is willing to act as such.

Separation of assets of portfolio handed to or received by manager, trustee or custodian

59. For the purposes of a claim against a manager, trustee or custodian:

- (a) any money or other assets handed to that manager, trustee or custodian or its authorised agents by an investor for the sale or repurchase of a participatory interest; or,
- (b) the assets of a portfolio

shall be excluded from the assets of the manager, trustee or custodian.

Separation of funds of investors and other persons

60. (1) A manager shall:

- (a) open and maintain a separate trust account controlled by the trustee or custodian for each or for all the portfolios administered under its scheme at a bank licensed under the Financial Institutions Act, 2005; and,
- (b) on the date of receipt of any payment in cash, cheque, draft or other instrument from or on behalf of an investor or on the first business day thereafter, deposit in such account either the cash, cheque, draft or other instrument by means of which such payment is made or, alternatively, deposit for same day value in such account funds equal to the amount of such payment.

(2) Subject to subsection (3), funds deposited into a trust account referred to in subsection (1) may only be withdrawn for the purposes of making payment:

- (a) to the investor, person or manager entitled to such payment; or,
- (b) in terms of this Act, any other law and the deed:

(3) If, after a withdrawal as contemplated in subsection (2), any deposited cheque, draft or other instrument against which such withdrawal was made is not subsequently honoured, the manager shall immediately pay the shortfall arising from such default into the trust account or cancel any participatory interest issued in respect of such defaulting payment.

(4) The High Court may, on application by the Registrar or by any other person having a financial interest in or claim against a trust account, on good cause shown, prohibit a manager from operating such account in any way and may appoint a curator to control and administer such account with such duties and powers in relation thereto as the court may deem fit.

Matters which shall be provided for in deeds

61. (1) A deed shall prescribe the Rules for the administration of the scheme concerned and shall contain such provisions as may be prescribed by the Registrar.

(2) The Registrar may prescribe different sets of provisions for different types of schemes.

Amendments and void provisions of deeds

62. (1) Any amendment to a deed shall require the prior approval of the Registrar.

(2) A provision in a deed relating to a scheme, which is inconsistent with any provision of this Act, shall be void.

(3) Any provision of a deed shall be void in so far as it would have the effect of exempting the manager, trustee or custodian from liability for any failure to exercise reasonable care in the discharge of their functions in respect of a scheme.

Amalgamation of business of collective investment schemes or portfolios and cession, transfer or take over of rights of investors

63. The business of two or more collective investment schemes or two or more portfolios of a collective investment scheme may not be amalgamated, and the rights of the investors in a portfolio may not be ceded or transferred to or be taken over by any other portfolio or collective investment scheme, except with the prior consent of:

- (a) investors holding a majority in value of participatory interests in each collective investment scheme or portfolio to which a proposed amalgamation, cession, transfer or take-over refers; and,
- (b) the Registrar, granted on such conditions as he may determine in writing.

Winding-up of portfolios of collective investment schemes

64. (1) If at the time, whether before or after the commencement of this Act, when a portfolio was first formed under a collective investment scheme, no period was fixed for the duration of that portfolio, the manager, trustee or custodian may, on application to the Registrar and subject to such terms and conditions as the Registrar may determine, wind-up that portfolio at any time.

(2) Notwithstanding subsection (1), the High Court may, on the application of a manager, trustee or custodian, order any such portfolio to be wound-up if the court is satisfied that to do so would be in the interest of the investors in that portfolio.

(3) Upon the winding-up of a portfolio in terms of this section, the manager shall under the control and supervision of the trustee or custodian, realise all the assets of such portfolio as soon as possible having regard to the interests of investors, but the manager incurs no liability by reason of the exercise in good faith of its discretion as to the time of realisation as to the time of realisation of any assets unless the discretion is exercised in a grossly negligent manner.

(4) The net proceeds of the realisation of the assets of a portfolio under this section shall be deposited in the trust account referred to in section 60 and shall, under the control and supervision of the trustee or custodian, be distributed by the manager or the trustee or custodian, as the case may be, amongst the investors and the manager in proportion to their respective participatory or other interests in the portfolio.

(5) Pending the realisation of the assets of a portfolio in a winding-up in terms of this section, the manager, trustee or custodian shall, on behalf of the collective investment scheme, collect all income accruals in respect of the portfolio and shall deposit and distribute the amounts collected in the manner prescribed in subsection (4).

Manner of dealing with property on winding-up of manager

65. (1) In the event of the winding-up of a manager, the liquidator shall take immediate steps to cause the underlying assets constituting each portfolio to be transferred into the name of the trustee or custodian who shall hold such assets on behalf of the holders of certificates relating thereto pending their realisation by the liquidator.

(2) The trustee or custodian shall deal with the underlying assets constituting each portfolio referred to in subsection (1) in the manner prescribed by the Registrar.

Listing of participatory interests by a securities exchange

66. (1) The manager of a prescribed scheme shall apply for permission for participatory interests in that scheme to be dealt on a licensed securities exchange and shall ensure that the requirements of such exchange for inclusion of the participatory interests in its list of securities which may be dealt in on such exchange are complied with.

(2) For purpose of this section, "prescribed scheme" shall mean a scheme prescribed by the Registrar.

Appointment of auditor

67. (1) The manager of a scheme shall appoint an auditor and apply within thirty (30) days from the date of such appointment to the Registrar for approval of such appointment.

(2) The Registrar may:

- (a) approve the appointment;
- (b) withhold approval of the appointment; or,
- (c) withdraw any prior approval granted under this section.

(3) If the Registrar under paragraphs (b) and (c) of subsection (2) withholds approval or withdraws an approval previously granted by him, as the case may be, the manager shall appoint another person as auditor.

(4) An auditor who has been removed by a manager from office as auditor of a collective investment scheme shall forthwith inform the Registrar thereof.

(5) A director or employee of a manager, trustee or custodian or a firm of which any such director or employee is a member, may not be appointed as an auditor of a collective investment scheme.

Conduct of audits

68. (1) An auditor appointed under Section 67 shall, in conformity with generally accepted auditing standards, examine the accounting records and annual financial statements of the manager and satisfy itself that:

- (a) the accounting records comply with the requirements of this Act; and,
- (b) the financial statements are properly drawn up so as to fairly present the financial position and the results of the operations of the manager and every portfolio of its collective investment scheme in accordance with generally accepted accounting practice and in the manner required by this Part.

(2) An auditor of a collective investment scheme who has conducted an audit in terms of subsection (1) shall report to the manager to the effect that:

- (a) the auditor has examined the accounting records and the annual financial statements in accordance with generally accepted auditing standards and in the manner required by this Part; and,
- (b) in the considered opinion of the auditor, the accounting records and annual financial statements of the manager fairly present the financial position and the results of the operations of the manager and its collective investment scheme.

(3) If an auditor is unable to make a report in terms of subsection (2) or to make it without qualification, the auditor shall include in his report a statement explaining the facts or circumstances which prevented the auditor from making his report or from making it without qualification.

(4) The auditor's report under subsection (3) shall, unless all the members present agree to the contrary, be read out at the annual general meeting of the manager.

(5) The auditor shall:

- (a) report to the manager any irregularity or undesirable practice in the management of the manager or the administration of the collective investment scheme which has come to his Notice in the ordinary course of performing work undertaken to fulfill his audit responsibilities or other duties in terms of this Part; and,
- (b) submit a copy of such report to the Registrar if in his opinion there is reasonable cause to believe that such report is or may be of material significance to the Registrar.

(6) An auditor who fails to perform any of the duties referred to in this section commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand Emalangeni (E250,000) or to imprisonment for a period not exceeding five (5) years or to both such fine and imprisonment.

Furnishing of information to Registrar

69. A manager, trustee or custodian shall within a period of seven (7) days after receipt of a written request from the Registrar, or within such further period thereafter as the Registrar may allow, furnish the Registrar with such information in relation to a scheme managed by a manager as the Registrar may request.

Scheme Rules

70. (1) The Registrar may make Rules as to the:

- (a) constitution, management and operation of schemes;
- (b) powers, duties, rights and liabilities of the manager, trustee or custodian of any such scheme;
- (c) rights, duties and obligations of the participants in any such scheme; and,
- (d) winding up of any such scheme.

(2) Without prejudice to the generality of subsection (1), Rules under this section may make provision:

- (a) as to the issue and redemption of participatory interests under a scheme;
- (b) as to the expenses of a scheme and the means of meeting them;
- (c) for the appointment, removal, powers and duties of an auditor for a scheme;
- (d) for restricting or regulating the investment and borrowing powers exercisable in relation to a scheme;
- (e) requiring the keeping of records with respect to the transactions and financial position of a scheme and for the inspection of those records;
- (f) as to the conditions under which foreign schemes may be permitted to operate in Swaziland;
- (g) requiring preparation of periodical reports with respect to the scheme and the furnishing of those reports to the participants and to the Registrar;
- (h) with respect to the amendment of a scheme;
- (i) with respect to the types of schemes that may be authorised under this Act; or,
- (j) as to the period of validity of a prospectus issued under this Part.

(3) Rules under this section may make provisions as to the contents of the deed, including provision requiring any of the matters mentioned in subsection (2) above to be dealt with in the deed.

Foreign assets in which collective investment schemes may invest

71. (1) A manager may, subject to the provisions of this Act or any or conditions that may be prescribed by the Registrar, invest assets of a portfolio of investment scheme in such foreign assets as may be approved by the Registrar.

(2) Notwithstanding subsection (1), a manager may not invest assets of a portfolio in excess of fifty (50) per cent of the total assets of that portfolio.

(3) The Minister may, by Notice published in the Gazette, vary the percentage prescribed in subsection (2).

Limitation on investment in portfolio

72. (1) The Registrar may prescribe the manner in which limits and conditions subject to which assets or classes of assets may be included in a portfolio of a scheme.

(2) The Registrar may prescribe the manner, limit and conditions for different assets or different portfolios of a collective investment scheme.

**PART VII
CONDUCT OF BUSINESS**

Power of Registrar to prescribe Rules of good business conduct

73. (1) The Registrar may prescribe Rules of good conduct in respect of the conduct of business by a licensed person.

(2) Without affecting the generality of subsection (1), Rules made under this section may:

- (a) specify requirements applicable to a licensed person in relation to securities financing;
- (b) prohibit the use of misleading or deceptive advertisements by or on behalf of a licensed person, and impose conditions or restrictions for the use of advertisements by or on behalf of the licensed person;
- (c) specify terms and conditions to be included in customer contracts and provide that the terms and conditions are, unless the Registrar in relation to any particular term or condition otherwise directs, to be deemed to be of the essence of the customer contracts in which they are included, whether or not a different intention appears in the provisions of the customer contracts;
- (d) specify information that a licensed person is to provide to its customer on entering into a customer contract with the customer, and thereafter from time to time on request by the customer, concerning the business of the licensed person and the identity and status of any person acting on behalf of the licensed person with whom the customer may have contact;
- (e) require a licensed person to ascertain, in relation to each customer of the licensed person, specified matters relating to the identity, financial situation, investment experience and investment objectives of the customer relevant to the services to be provided by the licensed person, and specify the steps to be taken for this purpose;
- (f) require a licensed person, when providing information or advice concerning capital markets products to a customer of the licensed person, to ensure the suitability of the information or advice to be provided to the customer, and specify the steps to be taken for this purpose;
- (g) require a licensed person to disclose to a customer of the licensed person the financial risks in relation to capital markets products that the licensed person recommends to the customer, and specify the steps to be taken for this purpose;

- (h) require a licensed person, to disclose to a customer of the licensed person any commission or advantage the licensed person receives or is to receive from a third party in connection with any capital markets products which the licensed person recommends to the customer, and specify the steps to be taken for this purpose;
 - (i) prohibit a licensed person from effecting a transaction on behalf of a customer of the licensed person except in specified circumstances;
 - (j) specify the circumstances in which, and the conditions under which, a licensed person may use information relating to the affairs of the customer of the licensed person;
 - (k) require a licensed person to take steps to avoid cases of conflict between any of their interests and those of a customer of the licensed person, and specify the steps to be taken in the event of a potential or actual case of conflict;
 - (l) specify the circumstances in which a licensed person may receive any property or service from another licensed person in consideration of directing business to that other licensed person;
 - (m) specify the circumstances in which, and the conditions and restrictions under which, a representative of a licensed person is permitted to deal or trade for his own account in securities; or,
 - (n) provide for any other matter relating to the practices and standards of conduct of a licensed person in carrying on business in terms of this Act.
- (3) Rules made under this section may provide that any customer contract entered into by a licensed person with its customer otherwise than in compliance with any specified Rules, notwithstanding anything in the contract, is unenforceable at the option of the customer.
- (4) Rules made under this section may provide:
- (a) that a contravention of any specified provision thereof shall be an offence; and,
 - (b) for penalties not exceeding a fine of one hundred thousand Emalangeni (E100,000) or imprisonment for a term not exceeding 12 months or both such fine and imprisonment.

(5) In this section, "customer contract" means any contract or arrangement between a licensed person and a customer of the licensed person which contains terms on which the licensed person is to provide services to, or effect transactions for, the customer.

(6) Where any customer contract is entered into in contravention of the Rules of business conduct prescribed under this section, the contravention is actionable at the suit of any person who suffers a loss as a result of the contravention.

Capital adequacy standards, fidelity insurance and professional indemnity and appointment of compliance officer

74. (1) A dealer, investment adviser or manager shall at all times maintain such capital adequacy standards in relation to the business to which they are licensed as may be prescribed by the Registrar by Notice published in the Gazette.

(2) The capital adequacy standards prescribed by the Registrar under subsection (1) may:

- (a) impose standards which are absolute or which are to vary from time to time by reference to factors which are either specified in, or are to be determined in accordance with, the Notice;
 - (b) impose standards which take account of any business carried on by the person concerned in conjunction with, or in addition to, the business in relation to which the person is licensed; and,
 - (c) make provisions as to the assets, liabilities and other matters to be taken into account in determining a person's capital adequacy standards for the purposes of the notice and the extent to which, and the manner in which, they are to be taken into account for that purpose.
- (3) A dealer, investment adviser or manager shall:
- (a) insure itself against any loss resulting from the negligence or dishonesty of any of its officers and other personnel to an amount which the Registrar deems adequate with a person approved by the Registrar and carrying on insurance business in Swaziland or the business of guaranteeing against any such loss; and,
 - (b) indemnify itself against legal liability to pay compensatory damages, including claimants and defence costs, as a result of any negligent act, negligent error or negligent omission in the conduct or execution of its professional activities and duties to an amount that the Registrar deems adequate.

(4) A dealer, investment adviser or manager shall designate one of its officers as a compliance officer for the purpose of ensuring compliance with this section, the provisions of this Act, Regulations and Notices issued hereunder and such other Directives as may be issued by the Registrar from time to time.

PART VIII

ACCOUNTS OF DEALERS AND INVESTMENT ADVISERS

Application of this Part

75. (1) This Part shall apply to and in relation with:

- (a) the business of a dealer within the meaning of this Act, whether that business is carried on in Swaziland or elsewhere; and,
- (b) an investment adviser who carries on the business of managing a portfolio of securities for a client for investment purposes whether on a discretionary authority granted by the client or otherwise.

(2) The Registrar may, if the Registrar deems it consistent with the public interest, exempt an investment adviser from having to comply wholly or partly with this Part.

Accounts to be kept by dealers

76. (1) A dealer shall keep or cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the dealer's business and enable true and fair profit and loss accounts and balance-sheets to be prepared from time to time and shall cause those records to be kept in such a manner as to enable them to be conveniently and properly audited.

(2) Without affecting the generality of subsection (1), every dealer shall maintain such books and records and file such reports in such form and manner as may be prescribed by the Registrar.

(3) A dealer who contravenes or fails to comply with any of the provisions of this section commits an offence and is liable on conviction to a fine not exceeding twenty thousand Emalangeni (E20,000) and, in the case of a continuing offence, to a further fine of five thousand Emalangeni (E5,000) for every day or part thereof during which the offence continues.

Certain moneys or property received by dealers to be paid into trust account

77. (1) A dealer shall establish and maintain with a bank or banks licensed under the Financial Institutions Act, 2005, one or more trust accounts in Swaziland for the dealer's clients.

(2) A dealer shall pay or deposit any moneys or property held by that dealer on trust for a client into a trust account not later than the next bank business day following the day on which the dealer has received the moneys or property.

(3) A dealer who contravenes or fails to comply with subsection (2) commits an offence and is liable on conviction to a fine not exceeding fifty thousand Emalangeni (E50,000) and, in the case of a continuing offence, to a further fine of five thousand Emalangeni (E5,000) for every day or part thereof during which the offence continues.

(4) Without limiting the generality of subsection (2), a dealer shall pay into a trust account within the time specified in that subsection:

- (a) the moneys, less any brokerage or other proper charges, that are received from or on account of the client for the purchase of securities and that are not attributable to securities delivered to the dealer;
- (b) the moneys, less any brokerage or other proper charges, that are received for or on account of the client from the sale of securities and that are not paid to the client or paid as the client directs; and,
- (c) any other moneys received from or on account of the client that are not paid to the person entitled to the payment or paid as the client directs.

(5) For the purposes of this section, "client", in relation to a dealer, means any person on whose behalf a dealer holds moneys or property, but does not include the dealer himself or herself.

Purposes for which money may be withdrawn from trust account by a dealer

78. (1) A dealer who withdraws any moneys from a trust account except for the purpose of making a payment:

- (a) to the person entitled thereto;
- (b) defraying brokerage and other proper charges; or,
- (c) that is otherwise authorised by law,

commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Emalangeni (E100,000) or to imprisonment for a term not exceeding three (3) years or to both, such fine and imprisonment.

(2) A dealer who, with intent to defraud, withdraws money from a trust account, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Emalangeni (E100,000) or to imprisonment for a term not exceeding three (3) years or to both such fine and imprisonment.

Accounts to be kept by an investment adviser

79. (1) An investment adviser shall keep or cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of his business and enable true and fair profit and loss accounts and balance-sheets to be prepared from time to time and shall cause those records to be kept in such manner and form as to enable them to be conveniently and properly audited.

(2) Without affecting the generality of subsection (1), an investment adviser shall maintain such books and records and file such reports in such form and manner as may be prescribed by the Registrar.

Clients' money

80. (1) An investment adviser shall not deal in securities for or on behalf of a client unless, to the extent that the investment adviser receives client's money or property:

- (a) the investment advisor does so on the basis that it shall be applied solely for specified purposes agreed when or before the investment advisor receives the money or property;
- (b) pending such application, the money or property is paid or deposited by the next bank business day to a bank with whom the trust account is maintained in accordance with this Part; and,
- (c) a separate book entry shall be recorded and maintained for each client by the investment adviser in accordance with this Act or Regulations made thereunder, in relation to that client's money or property.

(2) In this section, "client's money or property" means money received or retained by an investment adviser or property deposited with an investment adviser in the course of the business of the investment adviser as such for which the investment adviser is liable to account to another person; or money received or property deposited and held on trust by a bank for which it is liable to account or deliver to another person.

Operation of a trust account by an investment adviser

81. (1) An investment adviser shall make arrangements for a bank or banks licensed under the Financial Institutions Act, 2005, to maintain one or more trust accounts in Swaziland for the clients of that investment adviser.

(2) The bank shall be appointed by:

- (a) an investment adviser with the prior written consent of the client concerned; or,
- (b) the client concerned.

(3) An investment adviser shall pay or deposit any moneys or property held by the investment adviser on trust for a client into a trust account not later than the next bank business day following the day on which the investment adviser received the moneys or property.

(4) An investment adviser who withdraws any moneys from a trust account other than for the purpose of making a payment:

- (a) to the person entitled thereto; or,
- (b) that is otherwise authorised by law,

commits an offence and is liable on conviction to a fine not exceeding fifty thousand Emalangeni (E50,000) or to imprisonment for a term not exceeding eighteen (18) months or to both such fine and imprisonment.

(5) An investment adviser who, with intent to defraud, withdraws any moneys from a trust account commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Emalangeni (E100,000) or to imprisonment for a term not exceeding three (3) years or to both such fine and imprisonment.

(6) The holder of an investment adviser's representative's licence shall neither accept nor hold client's moneys or property unless the investment adviser's representative does so on behalf of an investment adviser and in the course of employment under a contract of service with that investment adviser.

Rights to copies of book entries of transactions and to inspect contract notes related thereto

82. (1) An investment adviser shall supply, on demand, to any client of the investment adviser or to any person authorised by the client, copies of all entries in the books of the investment adviser relating to any transaction carried out on behalf of that client, and the investment adviser shall be entitled to levy a reasonable charge therefor.

(2) A client or any person authorised by the client shall be entitled at any time, free of charge, to inspect any contract notes and vouchers relating to any transaction in respect of that client.

Duty to furnish Registrar with such returns and information as Registrar requires

83. A dealer and an investment adviser shall furnish such returns and provide such information relating to his business as the Registrar may require.

Moneys in trust accounts not available for payment of debts, etc.

84. Except as otherwise provided in this Part, moneys held in a trust account shall not be available for payment of the debts of a dealer or investment adviser or be liable to be paid or taken in execution under an order or process of any court.

Claims and liens not affected

85. Nothing in this Part shall be construed as taking away or affecting any lawful claim or lien which any person has against or upon any money or property held in a trust account or against or upon any money or property received for the purchase or from the sale of securities before such money is paid or property is deposited into a trust account.

Application to the High Court by the Registrar

86. Upon application made by the Registrar, and upon good cause shown, the High Court may prohibit any dealer or investment adviser from operating in any way a trust account of the investment adviser and may appoint a *curator bonis* to control and administer the trust account with such rights, duties and powers, in relation thereto, as the court may deem fit.

PART IX
PUBLIC OFFERS OF SECURITIES

Advertisements offering securities

87. For the purposes of this Part, an advertisement offers securities if it:

- (a) invites a person to enter into an agreement for or with a view to subscribing for or otherwise acquiring or underwriting any securities; or
- (b) contains information calculated to lead directly or indirectly to a person entering into such an agreement.

Prospectus to be approved by Registrar

88. (1) Subject to subsection (2), a person shall not issue or cause to be issued in Swaziland an advertisement offering securities to the public unless the issuer or offeror of such securities has submitted for approval to the Registrar, and the Registrar has approved, a prospectus which complies with the requirements of this Part.

(2) For the purposes of this Part, "public" includes any section thereof, but does not include an identifiable category of persons.

(3) Subsection (1) shall not apply to securities of the following types:

- (a) securities offered in connection with a takeover bid; or
- (b) securities offered in connection with a merger.

(4) Subsection (1) shall not apply to a prospectus which is exempted from the requirements of this Part by Regulations made under this Act.

(5) An advertisement made pursuant to subsection (1) shall not be issued except by or with the consent of the issuer of the securities.

Contents of prospectus

89. (1) In the case of an issue of securities that is required to be the subject of a prospectus under section 98, the Registrar shall not approve the prospectus unless:

- (a) it contains all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of the:
 - (i) assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and,
 - (ii) rights attaching to those securities; and,
- (b) it contains, in addition, such other information and particulars, and complies with such other requirements as may be prescribed by the Registrar.

(2) The requirements of subsection (1) are additional to those of the Companies Act, 2009, in relation to the contents of prospectuses.

Compensation for false or misleading particulars

90. (1) The director of an issuer, and any other person who is responsible for the prospectus, shall be liable to pay compensation to any person who has acquired any of the securities in question and suffered loss in respect of them as a result of any untrue or misleading statement in the prospectus or the omission from the prospectus of any matter required to be included by or under section 89.

(2) For the purposes of subsection (1), acquisition by any person of securities includes the contracting to acquire them or an interest in them.

Continuing disclosure obligations

91. (1) An issuer of securities that are the subject of a public offer, or which are publicly held, shall keep the Registrar, members of the issuer and other holders of its securities informed as soon as reasonably practicable of any information relating to the issuer and its subsidiaries, if any, that:

- (a) is necessary to enable them and the public to appraise the financial position of the issuer and of its subsidiaries;
- (b) is necessary to avoid the establishment of a false market in its securities or,
- (c) might reasonably be expected materially to affect market activity in the price of its securities.

(2) In addition to the requirements of subsection (1), an issuer shall also comply with:

- (a) such further obligations and requirements as may be prescribed by the Registrar; or,
- (b) the listing requirements of a securities exchange where the securities are listed.

(3) For the avoidance of doubt, this section applies to the issuer of securities publicly held prior to the coming into operation of this Act.

PART X

IMPROPER TRADING PRACTICES

False trading and manipulation of the securities exchange

92. (1) A person shall not create or cause to be created, or do anything with the intention of creating a false or misleading appearance:

- (a) of the volume of trading in any securities on any securities exchange in Swaziland; or,
- (b) with respect to the market for, or the price of, any such securities.

(2) A person shall not by means of the purchase or sale of any securities that does not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress or cause fluctuations in the market price of any securities.

(3) A purchase or sale of securities does not, for the purposes of subsection (2), involve a change in the beneficial ownership if a person who had an interest in the securities before the purchase or sale, or a person associated with that person in relation to those securities, holds an interest in the securities after the purchase or sale.

Use of deceptive statements, etc., as inducements

93. A person shall not induce or attempt to induce another person to deal in securities by:

- (a) making or publishing any statement, promise or forecast that that person knows to be misleading, false or deceptive;
- (b) the dishonest concealment of material facts; or,
- (c) recklessly or dishonestly making or publishing any statement, promise forecast that is false or misleading.

Fraudulent transactions

94. A person shall not, directly or indirectly, in connection with any transaction with other person involving the purchase, sale or exchange of securities:

- (a) employ any device, scheme or artifice to defraud that other person; or,
- (b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, on that other person.

False or misleading statement in connection with sale of securities

95. A person shall not, directly or indirectly, for the purpose of inducing the sale or purchase of the securities of any company, make with respect to those securities, or with respect to the operations or the past or future performance of the company, a statement which is:

- (a) at the time and in light of the circumstances in which it is made, false or misleading with respect to any material fact and which that person knows or has reasonable grounds to believe to be false or misleading; or,
- (b) by reason of the omission of a material fact, rendered false or misleading and which that person knows, or has reasonable grounds to believe, is rendered false or misleading by reason of omission of that fact.

Short selling

96. A person shall not sell securities which that person does not hold at, or through a securities exchange, unless at the time that person sells them:

- (a) that person has or, where that person is selling as agent, the principal has; or,
- (b) that person reasonably and honestly believes that he or she has or, where that person is selling as agent, that the principal has,

a presently exercisable and unconditional right to vest the securities in the purchaser of them.

Stock market manipulation

97. (1) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, two or more transactions in securities of an issuer being transactions that have, or are likely to have, the effect of raising the price of securities of the issuer on a securities exchange in Swaziland, with intent to induce other persons to purchase or subscribe for securities of the issuer or of a related issuer.

(2) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, two or more transactions in securities of an issuer, being transactions that have, or are likely to have, the effect of lowering the price of securities of the issuer on a securities exchange in Swaziland, with intent to induce other persons to sell securities of the issuer or of a related issuer.

(3) A person shall not effect, take part in, be concerned in or carry out, either directly or indirectly, two or more transactions in securities of an issuer, being transactions that have or are likely to have, the effect of maintaining or stabilising the price of securities of the issuer on a securities exchange in Swaziland with intent to induce other persons to sell, purchase or subscribe for securities of the issuer or of a related issuer.

Offences and penalties

98. A person who contravenes any of the provisions of this Part commits an offence and is liable on conviction:

- (a) in the case of a person not being a company, to a fine not exceeding one hundred thousand Emalangeni (E100,000) or to imprisonment for a term not exceeding two (2) years or to both such fine and imprisonment; or
- (b) in the case of a company, to a fine of not exceeding two hundred and fifty thousand Emalangeni (E250,000) or to imprisonment for a term not exceeding five (5) years or to both such fine and imprisonment.

Convicted person liable to pay damages

99. (1) A person who is convicted of an offence under this Part, or under section 98, shall, in addition to criminal liability for the offence, be liable, at the suit of any person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the act or transaction which comprises or is the subject of the offence, to an action for damages respect of the loss concerned.

(2) Nothing in this section limits or diminishes any civil liability which any person y incur under any other law.

PART XI INSIDER DEALING

Inside information, etc.

100. For the purposes of this Part:

- (a) "inside information" means information which:
 - (i) relates to particular securities or to a particular issuer of securities and not to securities generally or to issuers of securities generally;
 - (ii) is specific or precise;
 - (iii) has not been made public; and
 - (iv) if it were made public would be likely to have a significant effect on the price of any securities;

- (b) securities are "price-affected securities" in relation to inside information, if and only if the information would, if made public, be likely to have a significant effect on the price including the value of the securities.

Offence of insider dealing

101. (1) A person who has information as an insider commits the offence of insider dealing if that person:

- (a) deals in securities that are price-affected in relation to that information;
- (b) encourages another person to deal in securities that are, whether or not that other person knows, price-affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place; or,
- (c) discloses the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another person.

(2) A person who commits an offence under subsection (1) shall be liable conviction:

- (a) in the case of a person not being a company, to a fine not exceeding one hundred thousand Emalangeni (E100,000) or to imprisonment for a term not exceeding two (2) years or to both such fine and imprisonment; or,
- (b) in the case of a company, to a fine not exceeding two hundred and fifty thousand Emalangeni (E250,000).

(3) A court convicting a person under subsection (2) may make an order imposing on the convicted person a penalty of an amount not exceeding three (3) times the amount of any profit gained or loss avoided by any person as a result of the insider dealing.

(4) A contract shall not be void or unenforceable by reason only of the commission an offence under this section.

Insiders

102. (1) For the purposes of this Part, a person who has information is an insider if that person knows that the information is inside information; or that person knows that it is inside information from an inside source.

(2) For the purposes of subsection (1), a person has information from an inside source if:

- (a) that person has it through:
 - (i) being a director, employee or shareholder of an issuer of securities; or,
 - (ii) having access to the information by virtue of his or her employment, office or profession; or,
- (b) the direct or indirect source of the information is a person within paragraph (a).

Information "made public"

103. (1) For the purposes of section 100 "made public", in relation to information, shall be construed in accordance with the following provisions of this section, but these provisions are not exhaustive as to the meaning of that expression.

(2) Information is made public if it:

- (a) is published in accordance with the Rules of a securities exchange for the purpose of informing investors and their professional advisers;
- (b) is contained in records which by virtue of any enactment are open to inspection by the public;
- (c) can be readily acquired by those likely to deal in any securities:
 - (i) to which the information relates; or,
 - (ii) of an issuer to which the information relates; or,
- (d) is derived from information which has been made public.

(3) Information may be treated as made public even though it:

- (a) can be acquired only by persons exercising diligence or expertise;
- (b) is communicated to a section of the public and not to the public at large;
- (c) can be acquired only by observation;
- (d) is communicated only on payment of a fee; or,
- (e) is published only outside Swaziland.

PART XII**CENTRAL SECURITIES DEPOSITORIES AND CLEARING
AND SETTLEMENT OF SECURITIES TRANSACTIONS*****Interpretation***

104. In this Part, unless the context otherwise requires:

"account holder" means a person who holds a securities account in a central securities depository;

"beneficial owner" means, in relation to securities in a securities account, the ultimate owner of securities in that account but does not include a nominee of such owner;

"clearing" means the process of preparing for settlement a securities transaction which has been executed on a securities exchange, including the determination of the payment and delivery obligations of parties to a securities transaction, whether or not on a net basis;

"dealing", in relation to deposited securities, includes acquiring, disposing, charging or pledging of deposited securities by an account holder; executing a securities transaction and lending, borrowing or donating a gift of a deposited security;

"dematerialise" means to eliminate the physical holdings of scrip in exchange for a book entry on the electronic records of a central securities depository;

"deposited security" means a security standing to the credit of an account holder in a securities account, including a security in a pledged securities account under section 122 or in suspense under section 123;

"depository" means a central securities depository as defined in section 2 of this Act;

"electronic book entry system" means an electronic arrangement which permits the holding of securities whether or not represented by scrip and which permits the transfer of ownership or interest in those securities by electronic adjustments through securities accounts without physical movement or physical exchange of scrip or endorsement, and the expression "book entry" shall be construed accordingly;

"electronic record" means the record of a central securities depository;

"holder of record" means the securities of account holders in a central securities depository produced in the form of a list by the central securities depository from the electronic record showing the particulars of the beneficial owners and account holders of deposited securities, and any references to a depository register includes a list of holders of record;

"immobilise" means to deposit, with a central securities depository or its agent, physical holdings of scrip in exchange for a book entry on the electronic records of a central securities depository;

"netting" means the process of reducing multiple obligations for fewer settlement obligations or to a single settlement obligation;

"nominee" means a person authorised under section 115 to provide custodial services for securities;

"participant" means a company which is a member of a central securities depository;

"participating clearing bank" means a bank licensed to participate in a payment or clearing and settlement system established by law;

"pledge" means, in relation to deposited securities, the transfer of possession and control, but not of beneficial ownership, of a deposited security from the pledgor's securities account to the pledgee's securities account as security for the repayment of a debt or for the performance of an obligation in accordance with section 122;

"providing *custodial service*" means providing or agreeing to provide any service where the person providing the service has, under an arrangement with another person, the customer, possession or control of securities of the customer and carries out one or more of the following functions for the customer:

- (a) settlement of transactions relating to the securities;
- (b) collecting or distributing dividends or other pecuniary benefits derived from ownership or possession of the securities;
- (c) paying tax or other costs associated with the securities;
- (d) exercising rights, including without limitation voting rights, attached to or derived from the securities; and
- (e) any other function necessary or incidental to the safeguarding or administration of the securities.

"scrip" means any document that is, or a document of title to, a security or securities;

"securities account" means a book entry account of securities established by a central securities depository for an account holder in which dealings in securities by the account holder are recorded;

"settlement" means the completion of a securities transaction in accordance with section 128;

"settlement guarantee fund" means any such fund as may be established by a central securities depository under section 129.

Application and construction of existing laws and documents

105. (1) This Part shall apply to all central security depositories, deposited securities and to the clearing and settlement of transactions in securities registered under this Act or listed on a securities exchange.

(2) In the application of this Part, where, in relation to deposited securities, any law or any of the terms of a document is inconsistent with any of the provisions of this Part, the provisions of this Part shall, to the extent of the inconsistency, prevail.

Prohibition of unlicensed business

106. (1) A person shall not carry on, or purport to carry on, the business of a central securities depository unless that person holds a licence granted by the Registrar under this Part.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Emalangeni (100,000) or to imprisonment for a term not exceeding three (3) years or to both such fine and imprisonment.

Licensing of central securities depositories

107. (1) A public company may apply to the Registrar for a licence to establish and operate a central securities depository.

(2) An application for a licence under this section shall be in the form prescribed by the Registrar and shall be accompanied by:

- (a) the fee prescribed by the Registrar;
- (b) a copy of the rules of the applicant; and,
- (c) such information as the Registrar may reasonably require for the purpose of determining the application.

(3) Upon receipt of an application under this section, the Registrar may grant a licence to the applicant if the Registrar is satisfied that the:

- (a) Rules of the applicant make satisfactory provision for the:
 - (i) holding in safe custody of deposited securities;
 - (ii) prompt, safe and accurate clearing and settlement of transactions in deposited securities;
 - (iii) protection of the interests of account holders and the protection and control of information on deposited securities and dealings therein;
 - (iv) monitoring of compliance with, and the enforcement of, the rules of the central securities depository, as well as a fair procedure with respect to the discipline and control of participants, including denial of participation and limitation of access to its services;

- (v) establishment and management of a settlement guarantee fund;
 - (vi) carrying on of the business of a central securities depository with due regard to the interests of investors and the securities industry generally;
 - (vii) fair and reasonable allocation of fees among its participants;
 - (viii) fair representation of shareholders and participants in the selection of its directors and managers and in the administration of its affairs and services; and,
 - (ix) avoidance of the imposition of any burden on competition not necessary or appropriate in furtherance of the services of the central securities depository;
- (b) establishment and maintenance of the central securities depository would promote the positive development of capital markets in Swaziland; and
- (c) applicant satisfies any other requirements prescribed under this Act or any other law.

(4) The Registrar may impose on a licence such conditions as the Registrar may consider appropriate.

Refusal of licence

108. Where the Registrar refuses to grant an application for a licence, the Registrar shall inform the applicant, in writing, to that effect specifying the requirements which, in the opinion of the Registrar, have not been satisfied and state the reasons for the refusal.

Revocation of licence

109. (1) A licence may be revoked by order of the Registrar if at any time it appears to the Registrar that the central securities depository has:

- (a) failed to comply with any obligation, including any of the conditions of its licence, to which it is subject by virtue of this Part;
- (b) has contravened any of its own rules; or,
- (c) has failed to comply with an order of the Registrar made under section 110.

(2) The Registrar shall give prior written notice of the intention to revoke a licence to the central securities depository concerned and shall publish the notice in such manner as he considers appropriate for bringing it to the attention of persons who are likely to be affected by the revocation.

(3) A notice under subsection (2) shall give the reasons for which the Registrar proposes to revoke the licence.

(4) The order of revocation of a licence shall be effected in such a manner as to allow the central securities depository affected, sufficient time, not being less than three (3) months, to wind up its affairs and may contain such transitional provisions as the Registrar considers necessary or expedient.

(5) A central securities depository on which a notice under subsection (2) is served, and a participant or any other person who, in the opinion of the Registrar, is likely to be affected by the revocation of the licence may, within two (2) months or such longer period as the Registrar may

allow, after the date of service or publication, make representations to the Registrar, and the Registrar shall have regard to any representations made in determining whether to revoke the licence.

(6) Upon the revocation of a licence, the Registrar shall, in writing, inform the Registrar of Companies of the revocation.

Compliance order

110. If it appears to the Registrar that the circumstances set out in section 109 (1) may be rectified by the central securities depository, the Registrar may, instead of revoking the licence, order the central securities depository to comply with the obligation or the Rules or the order to which the failure or contravention relates.

Functions of a central securities depository

111. (1) The functions of a central securities depository are to:

- (a) operate a facility for the central custody and handling of securities registered under this Act or listed, under a system in which:
 - (i) securities entered in the records of the central securities depository, whether or not evidenced by scrip, are immobilised or dematerialised, as the case may be, and held in the safe custody of the central securities depository;
 - (ii) title to securities is held in book entry form;
 - (iii) securities are registered in the issuer's records under a nominee in the name of a beneficial owner; and,
 - (iv) dealings by account holders in respect of securities in securities accounts are effected by means of book entries made in those securities accounts at the central securities depository;
- (b) provide clearing and settlement facilities for securities traded on a licensed securities exchange under this Act;
- (c) promote the positive development of capital markets in Swaziland; and,
- (d) provide other facilities and services incidental to the functions specified in this subsection.

(2) Notwithstanding the Companies Act, 2009, a central securities depository shall not:

- (a) carry on any business other than that for which it is licensed under this Part; or,
- (b) admit to its operations any securities which are neither registered under this Act nor listed.

(3) All dealings on a securities exchange licensed in terms of this Act shall be cleared and settled through a central securities depository in accordance with the rules of that central securities depository.

Rules of a central securities depository to have effect as contract and participants to comply

112. (1) A central securities depository shall make rules for the proper and efficient carrying on of its business and shall, in particular, make rules in respect of the matters referred to in section 111 (3).

(2) Rules made under subsection (1) or any amendments to those rules shall not have effect unless the Registrar has first approved them.

(3) The Registrar may require a central securities depository to amend any of its rules in order to ensure that they comply with the provisions of this Part.

Participants in a central depository to comply

113. (1) The rules of a central securities depository shall operate as a binding contract between:

- (a) the central securities depository and each issuer;
- (b) the central securities depository and each participant;
- (c) each issuer and each participant; and,
- (d) a participant and any other participant,

in terms of which each of the parties agrees to observe and perform the provisions of the rules.

(2) Every participant in a central securities depository shall comply with the rules made by that central securities depository to the extent that those rules purport to apply to the participant.

Central securities depository to provide assistance

114. A central securities depository shall provide such assistance to the Registrar and the Central Bank as may be reasonably required by the Registrar or by the Central Bank for the performance of their respective functions under this Act or any other law.

Nominees

115. (1) A person shall not act as a nominee under this Part unless that person has been registered by the Registrar for the purpose.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand Emalangeni (E50,000) or to imprisonment for a term not exceeding one (1) year or to both such fine and imprisonment.

(3) A company registered under the Companies Act, 2009, may apply for registration or for the renewal of registration under this Part to the Registrar in the form and manner prescribed by the Registrar.

(4) An application under subsection (3) shall be accompanied by the fee prescribed by the Registrar.

(5) The Registrar may require an applicant to supply him with such further information, in relation to the application, as the Registrar considers necessary.

(6) The Registrar shall not refuse to grant or renew registration under this section without first giving the applicant an opportunity of being heard.

Dematerialisation, maintenance of security accounts and negotiability of deposited securities

116. (1) On a date to be prescribed by the Minister by Notice published in the Gazette:

- (a) any new issue of securities to be traded on a licensed securities exchange shall be issued in dematerialised form;
- (b) the electronic record of a central securities depository shall constitute the record of an issuer in respect of securities held in a central securities depository for that issuer and, in case of any discrepancy between the issuer's record and the record of the central securities depository, the latter shall prevail; and,
- (c) a central securities depository shall constitute the register of all securities in the securities accounts of its account holders.

(2) All securities registered under this Act or listed before the commencement of this Act shall be dematerialised within eighteen (18) months from the date prescribed by the Minister in terms of subsection (1).

(3) A central securities depository shall, during the period referred to in subsection (2), ensure safe custody of scrips and other documents evidencing title to the deposited securities of its account holders.

(4) The Minister may make Regulations for the complete elimination of scrip in order to give effect to the dematerialization of securities to which this Part applies.

(5) Every securities account in a central securities depository shall be in the name of the beneficial owner of the deposited securities or in the name of a nominee and in such form as may be prescribed by the Rules of the central securities depository.

(6) All deposited securities shall be regarded as negotiable instruments.

Fungibility

117. Securities of the same class issued by the same issuer shall be regarded as a fungible mass.

Asset segregation

118. (1) A person may hold one or more securities accounts in a central securities depository and the securities accounts of each person shall be segregated from each other and from the securities accounts of other account holders, and the interest, dividends and other benefits accruing to each securities account shall be similarly segregated.

(2) Unless otherwise agreed between a nominee and the central securities depository, a nominee shall hold securities for only one beneficial owner or for joint beneficial owners in respect of each securities account.

(3) A nominee shall, in such manner and within such period as may be specified in the rules of a central securities depository, furnish to the central securities depository the name and other particulars of the beneficial owner and of the balances of securities in a named securities account, held in the name of the nominee.

(4) A nominee who contravenes subsection (2) or (3) shall be liable to such penalty as may be specified by the central securities depository under its rules.

Holders of record

119. (1) A central securities depository shall, on such dates as may be requested in writing by an issuer or the issuer's representative, produce and submit to the issuer or the representative a list of holders of record in relation to securities held in the central securities depository relating to such issuer and the respective securities accounts held by account holders for the purpose of issuing notices, announcements, reports or for the payment of interest or dividends or for any other purpose.

(2) An account holder or a person authorised by the account holder may require the issuer in which he is a member to furnish him with a copy of the list of holders of record.

(3) A central securities depository may, in accordance with its rules, issue to an account holder upon request by the account holder in the prescribed form, a statement of the account holder's securities account specifying the amount and description of securities in the account.

(4) The High Court may, on application by an interested party, order the rectification of a list of holders of record or any other electronic record kept by a central securities depository if it is satisfied that:

- (a) an account holder did not consent to a transfer of deposited securities from the account holder's securities account and has diligently taken all reasonable measures to safe keep the securities and to inform the issuer and the central securities depository of the account holder's right to object to such transfer prior to the transfer and its registration;
- (b) a person who purports to be an account holder should not have been registered in the central securities depository register as having title to the deposited securities, unless that person acquired the securities for a consideration, in good faith and without notice of other interests in the securities and obtained registration of the transfer in the records of the issuer or the central securities depository; or
- (c) upon consideration of the application, there is other sufficient cause to justify the rectification,

and the court may make such other ancillary order as it considers appropriate.

Restriction on central depositories dealing in deposited securities

120. (1) A central securities depository shall not deal in the securities of its account holders except in accordance with the instructions of its participants pursuant to its rules.

(2) A central securities depository which deals in deposited securities contrary to subsection (1) shall be liable to such penalty as may be specified under rules made by the Registrar.

(3) Subsection (1) shall not be constructed as prohibiting the buying or selling, effected by a securities exchange or its clearing house according to the rules of a securities exchange or the clearing house, of securities which, in the case of a:

- (a) buy, a seller has failed to deliver on a day specified for settlement; or
- (b) sell, a buyer has failed to accept and pay for when delivered on a day specified for settlement.

Status of central securities depository in relation to issuer

121. A central securities depository shall not be deemed to be a shareholder or creditor of the issuer in respect of securities standing to the credit of its account holders.

Pledging of securities

122. (1) An account holder may, in accordance with the rules of a central securities depository, pledge as security any securities standing to the credit of that account holder in that account holder's securities account.

(2) Where deposited securities are pledged by an account holder in favour of any person, the central securities depository shall transfer the securities into the securities account of the pledgee established for the purpose in accordance with its rules and the account so established shall be designated as a pledged securities account.

(3) A request to pledge securities shall be supported by documents in the prescribed form evidencing the pledge in favour of the pledgee.

(4) Where a pledge over securities has been discharged, the central securities depository shall, upon receipt of a notice in the prescribed form from the pledgee confirming the discharge, transfer the deposited securities into the securities account of the pledgor.

(5) Subject to subsection (6), during the period in which a pledge over securities remains undischarged, a central securities depository shall act only on the instruction, and as agent, of the pledgee with regard to the pledged securities.

(6) A book entry holding of pledged securities shall constitute evidence of possession, but not ownership, of securities and the pledge of those securities shall constitute a transfer of possession from the pledgor to the pledgee.

(7) Except as otherwise provided in this section, the provisions of this Part relating to deposited securities shall apply to securities in pledged securities accounts.

Securities in suspense accounts

123. (1) A central securities depository may, in accordance with conditions prescribed by the Registrar under this Part, place deposited securities in a suspense account.

(2) A central securities depository shall declare deposited securities in a securities account to be in suspense where the central securities depository has been served with an order of a court affecting any entries in the account.

(3) Where deposited securities have been declared to be in suspense pursuant to this section, the rights, powers and privileges and the liabilities, duties and obligations of an account holder in respect of, or arising out of the suspension of such securities account, shall be directed in the court order.

(4) Where a dealing in respect of securities of an account holder has been concluded a securities exchange before a court order affecting the dealing in those securities is served on central securities depository, without prejudice to the right of an aggrieved party to any relief against the party in default, the order shall not operate so as to prevent the discharge of settlement obligations relating to that dealing.

(5) Where, as a result of a securities account having been declared to be in suspense under this section, the settlement of a securities transaction becomes impaired, the account holder of the securities account shall, in accordance with rules of the central securities depository, make good the loss.

Securities lending

124. The Registrar may make rules to provide for the lending of deposited securities on a collateralised basis for the purpose of preventing or otherwise dealing with failed securities transactions or allowing parties to such transactions to discharge their obligations arising from those transactions.

Securities exchange transactions to be cleared and settled

125. The clearing and settlement of securities transactions made on a securities exchange shall be effected through a central securities depository designated by the securities exchange on which the transactions are made.

Book entry transfers

126. (1) The transfer of ownership or interest in deposited securities from one account holder to another or the pledge of deposited securities by one account holder to another shall be effected by means of electronic book entries in securities accounts maintained by a central securities depository.

(2) Electronic book entries in the records of a central securities depository effected in accordance with subsection (1) shall have the same effect in the case of:

- (a) non-bearer securities, as an execution of an instrument of transfer and the delivery of a certificate; or,
- (b) bearer securities, as a delivery of a scrip.

Electronic book entries admissible in evidence

127. An electronic book entry in a securities account in a central securities depository or a document certified by the chief executive officer of a central securities depository or an officer of the central securities depository authorised for the purpose as a true copy or extract of that entry, shall be admissible in any court as *prima facie* evidence of the matters recorded therein.

Settlement of securities transactions

128. (1) The settlement of securities transactions concluded on a securities exchange shall be executed and completed upon a central securities depository transferring the securities transacted within the period prescribed by the Registrar, from the securities account of the transferor to that of the transferee in accordance with section 126, and where the consideration is:

- (a) monetary, by the Central Bank simultaneously transferring funds through debiting and crediting appropriate reserve or settlement accounts of participating clearing banks in same-day value funds and in accordance with an agreement between those banks on the one part and the central securities depository on the other part; or,
- (b) not monetary, by the simultaneous transfer of the consideration in accordance with the rules made by the central securities depository.

(2) The transfer of securities by a central securities depository and the transfer of funds by the Central Bank or the transfer of the non-monetary consideration under subsection (1) shall be final and irrevocable for the purpose of effecting a settlement.

(3) A participant of a central securities depository, other than a participating clearing bank, shall maintain a bank account with a participating clearing bank for the purpose of settling its payment obligations in accordance with the rules of the central securities depository.

(4) As between a transferor and a transferee referred to in subsection (1), the transfer of ownership of, or of an interest in, securities or a pledge of securities shall become effective and binding only upon the settlement of the transaction concerned.

Settlement guarantee fund

129. (1) A central securities depository shall establish a settlement guarantee fund for the purpose of managing settlement risks and defaults by counter-parties to securities transactions.

(2) A central securities depository may establish separate settlement guarantee funds for different categories of securities.

(3) Where the Registrar is satisfied that adequate arrangements, other than those required under subsection (1) or (2) for managing settlement risks and defaults exist, the Registrar may exempt a central securities depository from the requirements of those subsections.

(4) A settlement guarantee fund shall be administered in accordance with rules made by the central securities depository, which may:

- (a) provide for the determination and regulation of any matter relating to the operations of the fund by a body of persons, whether or not they are participants;
- (b) provide for the levying of contributions in money, securities, letters of credit and other instruments from participants and for financing the fund; or,
- (c) contain incidental and supplementary provisions.

(5) For the purposes of this section, "settlement risks or defaults" include the risk of loss of the full value of securities or funds that have been transferred to a defaulting counter-party to a securities transaction and the risk that a counter-party is unable, or likely to be unable, to settle an obligation for full value when due or at any time thereafter.

Tainted scrip and defective securities

130. (1) A person who deposits with a central securities depository a scrip which is counterfeit, bears an unauthorised or forged endorsement or is defective in title, shall replace the securities to which the scrip relates with non-defective securities in accordance with the rules of the central securities depository but without prejudice to that person's civil or criminal liability.

(2) A central securities depository may impose such monetary surcharges, as it may consider appropriate under its rules, against any person who contravenes subsection (1).

(3) A central securities depository shall not be liable for any of the following acts done in good faith and in the course of business:

- (a) the acceptance for deposit of counterfeit securities, securities bearing unauthorised or forged endorsements or which are defective in title or in any other respect that is not capable of being reasonably detected; or,

- (b) the effecting of entries in the account of an account holder of any type of security referred to in paragraph (a).

Meaning and commencement of insolvency under this Part

131. For the purposes of this Part, a participant or a depository is insolvent, and the insolvency shall be taken to commence, when the participant or depository ceases to be able to meet its obligations as and when they fall due or when its assets are insufficient to meet its liabilities.

Utilisation of collateral upon insolvency

132. Notwithstanding any law relating to insolvency or the winding up of companies, any asset of a participant pledged to a central securities depository as security for the settlement of obligations of the participant or its client pursuant to this Part prior to the insolvency of the participant may, upon and after the commencement of insolvency, be utilised by the central securities depository to the extent, and when required, for the discharge of those obligations.

Insolvency of participant

133. (1) A participant who is insolvent shall cease to be a member of the central securities depository and, except in so far as the rules of the central securities depository provide for the purpose of winding up the affairs of the participant and the protection of the interests of the participant's clients and of the securities exchange, such participant shall not, while insolvent, conduct any business relating to a depository.

(2) A person who, having ceased to be a participant and contrary to subsection (1), conducts any business relating to a depository commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Emalangenani (E 100,000) or to a term of imprisonment not exceeding two (2) years or to both such fine and imprisonment.

Insolvency of central securities depository

134. (1) Where a central securities depository becomes insolvent, the liquidator of the central securities depository shall not have any right or privilege of access to or control or management of, any of the securities deposited in that central securities depository.

(2) Securities deposited in a central securities depository which becomes insolvent shall be managed by a person appointed by the Registrar, in such manner as the Registrar may direct, for the purpose of winding up the affairs of the depository and protecting the assets of account holders and the interests of the securities industry and the public.

(3) A central securities depository shall not, while insolvent, carry on or purport to carry on the business of a depository except in so far as the Rules made by the Registrar provide for the purpose of winding up the affairs of a depository and the protection of the interests of its participants and of the securities exchange.

(4) The chief executive or any officer or employee of a central securities depository who, while a depository is insolvent and contrary to subsection (3), carries on or permits to be carried on the business of the central securities depository commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Emalangenani (E100,000) or to a term of imprisonment not exceeding two (2) years or to both such fine and imprisonment.

Irrevocability and finality of settlement

135. Where a participant is wound up, the winding up order shall not affect any settlement that shall have become final and irrevocable under this Part prior to the service of such order on the central securities depository.

Netting agreements, rules and procedures

136. Where a participant is wound up, the provisions of a written netting agreement or arrangement to which the participant is a party and any netting rules or procedures applicable to such participant shall be binding upon the liquidator in respect of any settlement obligation:

- (a) which has been incurred prior to the commencement of insolvency or prior to the issue of a winding up order;
- (b) which is to be discharged on or after the date of the winding up order; or,
- (c) the discharge of which was overdue on the date of the winding up order.

Restrictions on disclosure of Information

137. (1) A central securities depository shall take all reasonable measures in accordance with Rules made by the Registrar under this Part to preserve the confidentiality of restricted information acquired in the course of its operations and relating to the business affairs of its participants and account holders or relating to the deposited securities in its custody.

(2) Except as provided by or under this Part, an officer or employee of a central securities depository, whether during or after the officer's or employee's tenure of employment, and a participant or other person who has by any means, access to information relating to the business affairs of any account holders, or to their securities accounts, shall not give, reveal or otherwise disclose such information to any person except as permitted by section 138.

(3) A person who:

- (a) fails to take reasonable measures contrary to subsection (1); or,
- (b) gives, reveals or otherwise discloses any information contrary to subsection (2),

commits an offence and is liable on conviction to a fine not exceeding thirty thousand Emalangeni (£30,000) or to imprisonment for a term not exceeding one (1) year or both such fine and imprisonment.

Permitted disclosures

138. Section 137 shall not be construed as precluding the disclosure of information:

- (a) which an account holder, or the account holder's representative, has given permission in writing to disclose;
- (b) in a case in which the account holder is declared insolvent, or, where the account holder is a company, the company is being or has been wound up;
- (c) in criminal or civil proceedings under this Part or any other law or with a view to instituting any such proceedings;

- (d) to an issuer in respect of compiling or submitting a list of holders of record;
- (e) for the purpose of enabling or assisting the Registrar or the Central Bank to exercise their functions under this Part or under any other law, pursuant to a lawful order of the Registrar or of the Central Bank;
- (f) for the purpose of enabling or assisting a securities exchange, upon a written request made to the central securities depository, to discharge its functions in accordance with its rules, when disclosed pursuant to a lawful order of such securities exchange;
- (g) for the purpose of enabling auditors of a central securities depository or its participants to discharge their functions;
- (h) if the information is or has previously been available to the public from any source; or,
- (i) the disclosure of which is authorised by the Registrar by Rules made under this Part.

Regulation of access to electronic records

139. (1) Subject to any Rules made under subsection (2), a central securities depository may give access to its electronic record to its agent, a securities exchange on which the deposited securities are listed, a clearing house for a securities exchange, issuers and any other person as may be specified in the Rules of the central securities depository.

(2) The Registrar may, for the purposes of regulating access to electronic records issue Rules prescribing the extent to which a user may have, or should be prohibited from having, access to the electronic records of a central securities depository.

(3) A person who:

- (a) being a user, unlawfully gains access, or attempts to gain access, to the electronic records of a central securities depository, whether by means of any device or apparatus forming part of the electronic records or by any other means, beyond the extent to which the person is authorised to have access by the central securities depository under subsection (1) or under any Rules made under subsection (2);
- (b) unlawfully gains access, or attempts to gain access, to an electronic record of a central securities depository, whether by means of any device or apparatus forming part of the electronic record or by any other means; or,
- (c) unlawfully interferes with, or impedes, or attempts to interfere with or impede, the operation of an electronic record of a central securities depository,

commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Emalangeni (E100,000) or to imprisonment for a term not exceeding three (3) years or to both such fine and imprisonment.

(4) In this section "user" means a person having access to the electronic records of a central securities depository in terms of subsection (1).

Reports and accounts

140. (1) A central securities depository shall submit to the Registrar:

- (a) a yearly report within three (3) months after the end of its financial year on the activities of the central securities depository during the previous year;
- (b) financial statements audited by an auditor approved by the Registrar within three (3) months after the end of its financial year; and,
- (c) a report to the Registrar on any other matters of importance pertaining to the functioning of the central securities depository.

(2) A central securities depository shall, within a period of seven (7) days after receipt of a written request from the Registrar, or within such further period thereafter as the Registrar may allow, furnish the Registrar with such information in relation to the central securities depository as the Registrar may request.

**PART XIII
TAKEOVERS**

Application

141. This Part applies to issuers of listed shares.

Takeover offers

142. (1) In this Part, a "takeover offer", which includes a merger, means an offer to acquire by or on behalf of a company:

- (a) all the shares, or all the shares of any class, in another company, other than shares which at the date of the offer are already held by the offeror; or,
- (b) any shares in the offeree company which results in the offeror acquiring effective control of the offeree company.

(2) For the purposes of subsection (1), "acquiring effective control" means the acquiring of shares in an offeree company which together with shares, if any, already held by the offeror or by any other company that is deemed by virtue of section 143 be related to the offeror, carry the right to exercise, or control the exercise of, not less than fifty (50) percent of the rights attached to the voting shares of the offeree company.

When companies deemed to be related

143. Where a company is:

- (a) the holding company of another company;
- (b) the subsidiary of another company; or,
- (c) a subsidiary of the holding company of another company,

that first-mentioned company and that other company shall for the purposes of this Part be deemed to be related to each other.

Conduct of takeovers

144. (1) The Minister may make Regulations with respect to the making and conduct of takeover offers.

(2) A person shall not make or pursue a takeover offer except under and in accordance with Regulations made by the Minister under subsection (1).

PART XVI
MISCELLANEOUS PROVISIONS

Regulations

145. (1) The Minister may, after consultation with the Registrar, make Regulations as to:

- (a) all matters which by this Act are required or permitted to be prescribed by the Minister;
- (b) generally, all matters which he considers it necessary or expedient to prescribe in order that the objects of this Act may be achieved;
- (c) the efficient administration of this Act; or,
- (d) the protection of the investing public.

(2) Without prejudice to the generality of subsection (1), the Minister may make Regulations prescribing the matters necessary or expedient to give effect in Swaziland to the provisions of any treaty, convention, arrangement, memorandum of understanding, exchange of letters or other similar instrument relating to capital markets to which Swaziland or the Registrar is a party.

Period of licences

146. Licenses or certificates of registration issued under this Act expire on 31 December of the year for which they were issued but may be renewed on application to the Registrar in the manner and form prescribed by the Registrar.

Transitional provisions

147. (1) Notwithstanding the provisions of section 12 of this Act, the Swaziland Stock Exchange shall be deemed to be a licenced stock exchange for a period of two years of coming into effect of this Act.

(2) The Swaziland Stock Exchange shall prior to the expiry of the period of two years make an application to the Registrar for a licence under the Act and shall continue to operate as licenced securities exchange until the licence has been granted, refused or withdrawn.

(3) The terms of any deed created before the commencement of this Act in pursuance of a collective investment scheme may, notwithstanding anything in the deed or other instrument, be varied or supplemented by a deed made between the trustee or custodian and the manager under the scheme, or otherwise as the Registrar may approve, to enable compliance with the requirements of this Act and any Regulations or Rules made thereunder.

Exemption from liability

148. (1) No liability shall attach to members of:

- (a) the Board;
- (b) the committee of a securities exchange; or,
- (c) a central securities depository,

for any loss or damage sustained by any person as a result of the *bona fide* exercise or performance by the Registrar, the Board, the committee or members of a central securities depository of any power or duty conferred or imposed by this Act.

(2) Subsection (1) shall not be construed so as to prevent any person from recovering, by action in any competent court, compensation for any loss or damage sustained by that person, which was caused by negligence or breach of contract.

Prohibition of misleading names

149. (1) A person who is not a licensed person, its agent, or representative shall not, without the consent of the Registrar, use the word "stock exchange", "securities exchange", "stockbroker", "investment adviser", "asset manager", "portfolio manager", "fund manager", or any of their derivatives in any language, or any other word indicating the transaction of securities business, in the name, description or title under which such person is transacting business in Swaziland, or make or continue to make any representation to such effect in any bill-head, letter-paper, notice, advertisement or in any other manner whatsoever for the purpose of transacting securities business in Swaziland.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of five thousand Emalangeni (E5,000) or to a term of imprisonment not exceeding six (6) months or to both such fine and imprisonment.

(3) Nothing in subsection (1) shall prevent a person from using the words in subsection (1) or any of their derivatives in any language if it is:

- (a) for the sole purpose of establishing a company to the end of applying for a licence or registration under this Act; or,
- (b) included in the title of a staff association or a pension or provident scheme or fund or similar organisation connected with a licensed person.

LEGAL NOTICE NO. 223 OF 2010**THE FINANCIAL SERVICES REGULATORY AUTHORITY ACT, 2010
(Act No. 2 of 2010)****THE APPOINTMENT OF MEMBERS OF THE BOARD OF THE
FINANCIAL SERVICES REGULATORY AUTHORITY
NOTICE, 2010
(Under Section 7)**

In exercise of the powers conferred by Section 7 of The Financial Services Regulatory Authority Act, 2010, the Minister for Finance makes the following Notice -

Citation and Commencement

1. (1) This Notice may be cited as the Appointment of members of the Board of the Financial Services Regulatory Authority Notice, 2010.

(2) This Notice shall come into force on the date of publication in the gazette.

Appointment of members of the Board

2. The following persons are appointed as members of the Board of the Financial Services Regulatory Authority -

- | | | |
|--|---|-------------|
| (a) Mr. Muhawu Maziya | - | Chairperson |
| (b) Mr. Theo Mason | - | Member; |
| (c) Ms. Gigi Reid | - | Member; |
| (d) Mr. Modern Samketi | - | Member; |
| (e) Mr. Walter Matsebula | - | Member; |
| (f) Mr. Nkosinathi Maseko | - | Member; and |
| (g) Principal Secretary, Ministry of Finance
or a representative of the Principal Secretary | - | Member. |

Term of office

3. The members of the Board, other than the one appointed under section 2 (g) shall hold office for a period not exceeding three years with effect from the 1st December, 2010.

Remuneration

4. The Chairman and members of the Board shall be paid such allowances as are payable to a member of the Board of Directors of a Category B Public Enterprise.

MAJOZI V. SITHOLE
MINISTER OF FINANCE

Mbabane
7th December, 2010